



ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

**Summary of Comments Received on ACIR's
Preliminary Report on Federal Mandates**

*The Role of Federal Mandates in
Intergovernmental Relations*

prepared for
Members of the
U.S. Advisory Commission on Intergovernmental Relations

April 30, 1996



ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

April 30, 1996

MEMORANDUM

TO: Members of the U.S. Advisory Commission
on Intergovernmental Relations

FROM: William E. Davis, Executive Director

SUBJECT: Comments Received by ACIR in Response to Preliminary Report on Federal
Mandates

Enclosed is a summary of communications received in response to our *Federal Register* notice of January 17, 1996 soliciting public comment on the Preliminary Report, *The Role of Federal Mandates in Intergovernmental Relations*. The enclosed log includes 538 comments received by ACIR regarding one or more of the draft mandate reform proposals. Both supporting and opposing comments were received on all 14 specific mandates mentioned in the ACIR preliminary report as well as on several of the common issues discussed in the report.

With over five hundred comments having been received, ACIR staff has attempted to digest these responses to make them more easily consumable. This information is condensed in the following manner:

Tab A contains two-page summaries of comments received on each of the 14 specific mandates contained in the preliminary report.

Tab B is a log of mail, telephone, and FAX communications received on the Preliminary Report.

Tab C contains a summary of testimony presented at ACIR's March 26, 1996, public hearing on the Preliminary Report. Copies of complete individual statements are available for your review upon request.

Tab D contains summaries and individual responses received from federal agencies and departments, as well as Members of Congress.

Tab E is a summary of the comments and policy positions of state and local government interest groups.

Tab F is, for reference purposes, a copy of the Preliminary Report.

Following is a brief summary of the public comments received by ACIR on the individual mandates:

Labor Mandates: *Fair Labor Standards Act (FLSA), Family Medical Leave Act (FMLA), Occupational Safety and Health Act (OSHA)* -- While it is clear from the public comments that there is substantial opposition to fully exempting state and local governments from the labor mandates, it is also clear there is some willingness to provide state and local governments more flexibility, perhaps similar to that granted to the federal government.

Individual Rights Mandates: *Americans with Disabilities Act (ADA), Individuals with Disabilities Education Act (IDEA)* -- A majority of the public comments clearly indicate a desire to maintain current requirements and deadlines in the laws. There was strong support expressed for increased federal funding to support compliance efforts and to enhance technical assistance and education regarding the provisions of the laws. While there is substantial, but not unanimous, opposition to limiting rights of private action, even the comments opposing such a limitation indicate a great need for this issue to be reevaluated in a thorough and thoughtful way. Finally, there is almost equal support and opposition to consolidating enforcement of ADA requirements into a single agency.

Environmental Mandates: *Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), Endangered Species Act (ESA)* --The ACIR preliminary proposals called for moderate changes to allow flexibility while maintaining federal standards. Most of the comments on the Clean Water Act, the Safe Drinking Water Act, and the Endangered Species Act generally supported ACIR's draft recommendations. Views on the Clean Air Act were more divided. Comments supported 1) changes in process to assure state and local governments more involvement in decision making; 2) clarification of expectations that the federal government will grant waivers when necessary to assist government compliance with federal standards; and 3) increased grant assistance, particularly for communities in fiscal stress.

Transportation Mandates: *Drug and Alcohol Testing of Commercial Drivers, Metric Conversion of Plans and Specifications, and Required Use of Recycled Crumb Rubber* -- Comments on these mandates tended to be supportive of the ACIR positions. Respondents generally agree that drug and alcohol testing generates safety benefits, but the cost and inflexibility to small state and local governments are points of argument. As a possible option to outright repeal of drug and alcohol testing for state and local employees holding a commercial drivers license, there was support expressed for increased flexibility for small governments. The issues regarding metric are essentially moot at this time because an amendment to the law has been enacted to extend deadlines to the year 2000. As noted in

the preliminary report, the issues concerning crumb rubber also are moot based on a recently enacted law repealing the requirements.

Medicaid Amendment: *Boren Amendment* -- The Boren Amendment, which requires states to set "reasonable" reimbursement rates to assure "efficient and economical" services to Medicaid beneficiaries, was the only mandate ACIR reviewed in the area of health and human services. Since the Administration has expressed support in its Fiscal Year 1997 budget for the repeal of the Boren Amendment, there is little controversy over this issue at the moment. Nevertheless, most of the comments ACIR received opposed repeal either because the amendment is seen as a benefit to medical service providers or because there is fear that repeal of the mandate will diminish federal support for maintenance of high standards of quality care in hospitals and nursing homes.

Construction Grant Mandate: *Davis-Bacon Related Acts* -- While there was some opposition to ACIR's proposal, there was significantly more support than opposition. In fact, some commenters urged ACIR to go farther by proposing total repeal of Davis-Bacon rather than merely supporting modifications to Davis-Bacon related provisions in miscellaneous laws which provide federal assistance to state and local governments. The major change suggested in the report was deletion of the "example" language regarding where to set revised thresholds for compliance.



ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

**SUMMARY OF COMMENTS RECEIVED
IN RESPONSE TO**

***THE ROLE OF FEDERAL MANDATES IN
INTERGOVERNMENTAL RELATIONS***

April 30, 1996

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TAB E	Summary of State and Local Government Interest Group Comments
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FAIR LABOR STANDARDS ACT

Comment Summary (Total Comments: 36)

There are 36 public comments that concern FLSA. Of the 36, 17 express support for ACIR's repeal proposal, 18 express opposition to the repeal proposal, and 1 letter makes a technical comment without expressing a position on the proposal. In addition, there are three letters that express opposition to a repeal of the Equal Pay Act which may have been confused with the proposal regarding FLSA.

Reasons Given for Opposition to ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- Public accountability is insufficient to protect state / local employees (3)
- States will not set adequate standards (11)
- Public / private sectors should be treated the same (12)
- Governments should be model employers (3)
- Employees should have same protection regardless of where they work or live (6)
- Federal government (Congress / Executive) are covered by FLSA (7)
- FLSA is related to national economic and individual health (5)
- National interest or public good outweighs cost (9)
- FLSA is a individual "right" law, not an "unfunded federal mandate" (3)
- FLSA has sufficient flexibility for state/local government (3)
- Not all Public Employees are covered by collective bargaining or union contracts (2)
- DOL resource limitations make enforcement difficult without private right of action (2)
- More research and debate on issue is needed (6)

Reasons Given for Support of ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- Federal requirements conflict with local needs or creates budget burdens (9)
- Individual lawsuits to enforce federal law conflict with local priorities (4)
- State / local government employment policies are state / local government business (3)
- States should have flexibility like federal government or other changes should be made (8)
- DOL regulatory fixes not a realistic hope; need statutory change (1)
- General support expressed for repeal proposal (14)

Miscellaneous Comment

- Oppose repeal of "Equal Pay" Act (3)

FAIR LABOR STANDARDS ACT

Key to Comment Log

[The number is the identification # given the letter as shown in the first column of the comment log.]

Supportive Comments (Total supportive coments: 17)

77, 152, 161, 198, 226, 417, 431, 437, 444, 446, 464, 483, 485, 496, 499, 509, 525

Opposing Comments (Total opposing comments: 18)

35, 38, 43, 46, 84, 111, 181, 192, 200, 436, 452, 455, 474, 489, 491, 494, 497, 501

Miscellaneous Comments (Total miscellaneous comments: 1)

6 (Technical comment)

37, 78, 273 (Equal Pay Act)

Total Comments: 36 (excludes 3 regarding Equal Pay Act)

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

FAMILY AND MEDICAL LEAVE ACT

Comment Summary *(Total Comments: 56)*

There are 56 public comments that concern FMLA. Of the 56, there are 11 that express support for ACIR's repeal proposal, 45 that express opposition to the repeal proposal. Four of the 45 letters with comments opposing repeal suggested modifications instead of repeal. Twenty-five of the 45 letters commenting on FMLA combined FMLA comments with ADA / IDEA.

Reasons Given for Opposition to ACIR's FMLA Recommendations

- FMLA is a fundamental right especially important for women and disabled (14)
- Public and Private Employees should be treated the same (14)
- Repeal will lead to other exemptions / government should set example (8)
- FMLA is part of national policy to support family values (17)
- FMLA is related to national economic policy (10)
- FMLA is related to national health / health insurance policy (2)
- Federal government (Congress / Executive) are covered by FMLA (7)
- Flexibility is already available / costs are limited (8)
- States did not / will not have adequate standards (8)
- Employee / union concerns need to be considered (4)
- General concern over repealing occupational, health, and safety protections (5)

Reasons Given for Support of ACIR's FMLA Recommendations

- Mandates may or may not meet a local need (1)
- Mandates another layer of program implementation on local governments (1)
- Local accountability to public is sufficient to provide locally desired programs (2)
- Mandates interfere with local government's collective bargaining relationships (1)
- Local governments object when the federal government does not provide funding (2)
- Federal government should provide defense assistance and legal fees (1)
- Support for repeal because should be state issue or federal government should fund (10)

Oppose Repeal / Support Modification

- Give consideration to exempting state and local governments from FMLA if state statutes meet or exceed FMLA standards (1)
- Leaving the law as it is with changes to allow flexibility in meshing local/state government policies and/or to relief recordkeeping burdens (3)

FAMILY AND MEDICAL LEAVE ACT

Key to Comment Log

[The number is the identification # given the letter as shown in the first column of the comment log.]

Supportive Comments (*Total supportive coments: 11*)

77, 152, 161, 198, 226, 437, 446, 464, 496, 423, 509

Opposing Comments (*Total opposing comments: 44*)

9, 13, 16, 35, 37, 38, 43, 44, 46, 48, **49**, 51, 55, 78, 84, 85, 89, 110, 118, 133, 140, 144, 156, 181, 200, 273, 281, 344, 370, **388, 390**, 425, 452, 455, **483**, 487, 489, 493, 497, 501, 503, 512, 516, 521, 538

[Note: The 25 letters that tied FMLA comments to ADA / IDEA comments are listed in *italics*. The 4 letters that opposed repeal but suggested modifications are listed in **bold**.]

Total Comments: 56

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # **Organization**

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

OCCUPATIONAL HEALTH AND SAFETY ACT

Comment Summary (Total Comments:32)

There are 32 public comments that concern OSHA. Of the 32, there are 10 that express support for ACIR's repeal proposal, 20 that express opposition to the repeal proposal, and 2 letters that make technical comments regarding the report's language on OSHA with no indication of a position on the ACIR proposal. One of the 20 comments opposing repeal expresses support for an alternative option to modify the law by giving state governments authority similar to federal agencies.

Reasons Given for Opposition to ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- Healthy and safe work environment is universal right (12)
- General public has stake in healthy and safe government buildings (2)
- Public and private should be treated the same (9)
- OSHA coverage is state choice to administer federal program / not mandate (6)
- OSHA administrative cost is subsidized by federal government / not unfunded (5)
- OSHA coverage saves money by reducing injury related costs (3)
- OSHA coverage should be extended to more states and federal government (3)
- Most public employees are not covered by union or collective bargaining (2)
- States will not set adequate standards (4)
- Flexibility already exists in law (2)
- Federal government (Congress / Executive) are covered by OSHA (2)

Reasons Given for Support of ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- General expressions of support for repeal (7)
- Specific concerns with current law expressed (3)

Miscellaneous Comment

- Federal requirements should not override good state programs (2)
- Federal law needs to be modified to give states same flexibility as federal agencies (1)
- Support increased OSHA program funding --administrative or compliance (1)
- More research needed on OSHA impact on private sector (1)

OCCUPATIONAL HEALTH AND SAFETY ACT

Key to Comment Log

[The number is the identification # given the letter as shown in the first column of the comment log.]

Supportive Comments (*Total supportive coments: 10*)

77, 152, 161, 226, 417, 437, 446, 464, 485, 509

Opposing Comments (*Total opposing comments: 20*)

38, 43, 46, 84, 111, 114, 181, 192, *198*, 343, 200, 425, 428, 436, 452, 455, 489, 497, 498, 501
[Note: The one comment letter opposing repeal; but suggesting modification is listed in *italics*.]

Miscellaneous Comments (*Total miscellaneous comments: 2*)

6, 141 (Technical comments)

Total Comments:32

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

DRUG AND ALCOHOL TESTING OF COMMERCIAL DRIVERS

Comment Summary (Total Comments: 23)

There are 23 public comments that concern drug and alcohol testing of commercial drivers. Of the 23, there are 12 that express full support for ACIR's proposed recommendations, 7 that contain only opposing comments, and 4 that express support for some ACIR proposals and opposition for other proposals. There is general agreement that regulatory flexibility is a possible option to outright repeal of drug and alcohol testing for state and local employees holding a commercial drivers license. Respondents generally agree that drug and alcohol testing generates safety benefits, but the cost and inflexibility to small state and local governments are points of argument.

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of written and oral communications that include the comment]

- Support repeal of provisions making some state and local employees subject to federal drug and alcohol testing requirements for commercial drivers (9)
- Provisions are inconsistent because they include some employees (e.g., public works drivers) but exclude other employees (e.g., law enforcement) (1)
- Cost of compliance is disproportionately high to findings (1)
- Requirements are unnecessary burdensome/costly to small local governments (5)
- Support more cost effective and flexible requirements (4)
- Drug and alcohol requirements are unconstitutional (2)
- State or local government already had a drug and alcohol program (1)
- General support for ACIR recommendation (3)

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of written and oral communications that include the comment]

- Oppose repeal of provisions making some state and local employees subject to federal drug and alcohol testing requirements for commercial drivers (10)
- Cost of compliance is not disproportionately high to findings (1)
- Requirements are necessary, not burdensome/costly to small local governments (5)
- State / local governments will not take insure drivers do not threaten public safety (1)
- Drug / Alcohol tests promote public safety and deter driving under the influence (7)
- State/local governments should not be treated differently from the private sector (5)
- State / local governments will face greater liability without federal drug and alcohol testing requirements (1)

Miscellaneous Comments:

- Small local governments should join consortiums to relieve some costs and burdens.

DRUG AND ALCOHOL TESTING OF COMMERCIAL DRIVERS

Key to Comment Log

[The number is the identification # given to the correspondence as shown in the first column of the comment log.]

Supportive Comments *(Total supportive comments: 12)*

46, 70, 77, 98, 152, 161, 198, 363, 423, 437, 446, 496

Opposing Comments *(Total opposing comments: 7)*

13, 43, 55, 64, 181, 192, 269

Mixed Support/Opposition *(Total mixed comments: 4)*

12, 126, 199, 485

Total Comments: 23

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

METRIC CONVERSION FOR PLANS AND SPECIFICATIONS

Comment Summary (*Total Comments: 24*)

There are 24 public comments that concern metric conversion for plans and specifications. Of the 24, there are 10 that express full support for ACIR's proposed recommendations, 13 that contain only opposing comments, and 1 that expresses support for some ACIR proposals and opposition for other proposals.

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Oppose repealing requirements that state and local governments convert to metric on a federal timetable as a condition of receiving federal aid (8)
- Disagree that there are substantial costs involved with metric conversion (4)
- Disagree that it is difficult for state and local governments to adapt to metric (2)
- Disagree that metric will create problems for right-of-way acquisitions (1)
- Metric conversion deadlines should not be extended (6)
- Disagree that locals may have to convert back to English for some uses (1)
- Support continued use of waivers (5)
- Metric conversion provides a public benefit (4)
- Problems will exist if two sets of measurement continued (3)
- Repeal of metric requirements will stop progress toward metric conversion (9)
- Metric saves time and effort (3)
- U.S. needs to convert to metric to maintain role in international economy (6)
- Metric conversion will not limit number of contract bidders available (1)
- Private industry is already established in metric (3)
- Metric is not an unfunded mandate (2)
- General opposition to ACIR recommendation (1)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Support repealing requirements that state and local governments convert to metric on a federal timetable as a condition of receiving federal aid (5)
- Agree that there are substantial costs involved with metric conversion (3)
- Metric conversion deadlines should be extended (2)
- Metric conversion does not provide a public benefit (2)
- Metric does not save time and effort (1)
- Support the English system of measurement (1)
- General support for ACIR recommendation (6)

METRIC CONVERSION FOR PLANS AND SPECIFICATIONS

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log]

Supportive Comments *(Total supportive comments: 10)*

77, 102, 152, 161, 192, 423, 432, 437, 446, 485

Opposing Comments *(Total opposing comments: 13)*

24, 34, 46, 50, 84, 178, 179, 180, 236, 251, 269, 435, 482

Mixed Support / Opposition *(Total mixed comments: 1)*

263

Total Comments: 24

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

BOREN AMENDMENT

Comment Summary *(Total Comments: 16)*

There are 16 public comments on the Boren Amendment. Of the 16, there are 6 that express support for ACIR's repeal proposal, 9 that express opposition to the repeal proposal, and 1 letter makes a technical comment. Note: Five of the nine letters of expressing opposition are from persons or groups primarily interested in programs for persons with disabilities and one was from an elderly affairs organization. On the support side, five of the six letters of support were from government entities.

Reasons Given for Opposition to ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- Continue Boren Amend to assure quality of care is regulated (4)
- Continue Boren Amend to ensure admission of Medicaid beneficiaries to health facilities (1)
- Medicaid is a voluntary program / not unfunded mandate (2)
- Boren Amend protects providers -- assures fair reimbursement for regulated services (1)
- Current program is sufficiently flexible (1)
- ACIR should not "muddle" with Medicaid reform (1)
- General opposition expressed to repeal (4)
- Real issue is how to provide care for elderly, frail, and disabled / providers are demanding higher rates than states are willing to pay based on state priorities. (2)
- Object to ACIR report language implying that some courts require states to pay "all cost" of services provided (1)
- Critical of states' "failure to negotiate" / states set rates on a "take it or leave basis" (1)
- States cannot have it both ways: more defined terms and flexibility (1)

Reasons Given for Support of ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- General Support expressed for repeal (6)

BOREN AMENDMENT

Key to Comment Log

[The number is the identification # given the letter as shown in the first column of the comment log.]

Supportive Comments *(Total supportive comments: 6)*

77, 152, 161, 198, 446, 485,

Opposing Comments *(Total opposing comments: 9)*

13, 43, 55, 84, 89, 104, 200, 247, 301

Miscellaneous Comments *(Total miscellaneous comments: 1)*

6 (Technical comment)

Total Comments: 16

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # **Organization**

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

CWA / SDWA / CAA

Comment Summary (Total Comments: 47)

There are 47 public comments that concerned ACIR's proposals related to the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and/or the Clean Air Act (CAA). Of the 47, there are 29 that express support for ACIR's proposals, 13 that contain only opposing comments, and 5 that express support for some ACIR proposals and opposition for other proposals. Government entities generally supported the proposals; environmental groups either urged no changes or the strengthening of existing laws. Requests were made to add a discussion on two issues: stormwater requirements and alternative fuel requirements.

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

Clean Water Act

- Oppose any weakening of existing requirements (8)
- Need stricter laws of enforcement (2)
- Do not exempt States from lawsuits by individuals (2)

Safe Drinking Water Act

- Oppose any weakening of existing requirements (3)
- Need stricter laws of enforcement (3)

Clean Air Act

- Oppose any weakening of existing requirements (7)
- Need stricter laws of enforcement (2)
- Do not exempt States from lawsuits by individuals (1)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

Clean Water Act

- Generally support recommendations (17)
- Support increased direct funding (11)
- Support increased flexibility in imposing requirements (8)
- Requirements should be based on better science (1)

Safe Drinking Water Act

- Generally support recommendation (12)
- Support increased direct funding (1)
- Support increased flexibility in imposing requirements (2)
- Requirements should be based on better science (2)

Clean Air Act

- Generally support recommendation (10)
- Support increased flexibility in imposing requirements (4)

Miscellaneous Comments:

Clean Water Act

- Stormwater mandate issues should be included in report (2)
- Additional funding not needed if flexibility provided (1)

Safe Drinking Water Act

- Support Senate Amendments but oppose long-term goal of return to States (4)

Clean Air Act

Alternative fuel requirements for state / local government fleets should be in report (3)

CWA / SDWA / CAA

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log.]

Supportive Comments *(Total supportive comments: 29)*

10, 77, 152, 153, 161, 168, 198, 223, 236, 259, 269, 417, 422, 423, 428, 431, 432, 445, 446, 462, 481, 485, 491, 492, 496, 504, 509, 526, 527

Opposing Comments *(Total opposing comments 13:)*

46, 115, 124, 175, 199, 200, 261, 367, 387, 421, 474, 495, 529

Mixed Support / Opposition *(Total mixed comments 5)*

6, 121, 141, 171, 363

Total Comments: 47

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups

<u>Comment Letter #</u>	<u>Organization</u>
531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Comment Summary (Total Comments: 294)

There are 294 public comments that concern IDEA. Of the 294, there are 18 that express full support for ACIR's proposed recommendations; 83 that express support for some ACIR proposals and opposition for other proposals; and 191 that contain only opposing comments. Two letters had miscellaneous comments with no position statement. Most of the comments listed under "Mixed Support / Opposition" were put in that category because they contained language supporting the ACIR proposal to increase federal funding to the 40% authorized level yet they opposing other ACIR suggestions. [Note: 83 of the opposing comments were on pre-printed form letters. 198 of the letters with IDEA comments also contained comments on ADA.]

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Oppose providing relief from IDEA requirements (80)
- Parents should not be required to use Alternative Dispute Resolution (ADR) (24)
- Ability of individuals to bring court challenges should not be limited (127)
- IDEA is a civil right, should not have been included in mandate review (50)
- Oppose modification of funding formulas; overclassification not a problem (4)
- Oppose deferring implementation decisions to state or local agencies (34)
- Oppose elimination of state payment of attorney fees when plaintiff wins suit (17)
- Disagree that IDEA is overly litigious (9)
- Disagree that IDEA is excessively costly / burdensome (16)
- Oppose suggestion that greater flexibility be authorized to combine funding streams (4)
- IDEA is a condition-of-grant, not a mandate (10)
- Express general opposition to changes in IDEA (135)
- Express personal dependence on IDEA (63)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Support increase in federal funding to authorized 40% level (83)
- Concur with need for relief from IDEA requirements (8)
- Support requiring parents to use ADR (17)
- Support limiting individual ability to bring court challenges (3)
- Support modification of funding formula to reduce overclassifications / other concerns (13)
- Support deferring implementation decisions to state or local agencies (3)
- Support elimination of state payment of attorney fees when plaintiff wins suit (1)
- Agree that IDEA is overly litigious (9)
- Agree that IDEA is excessively costly / burdensome (7)
- Federal government should not withhold funds for non-compliance (4)
- Express general support for ACIR's proposed changes (11)

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log.]

Supportive Comments (Total supportive comments: 18)

19, 31, 47, 56, 77, 79, 109, 152, 161, 198, 427, 431, 434, 446, 466, 496, 499, 504

Mixed Support / Opposition (Total mixed comments: 83)

7, 13, 18, 26, 28, 49, 54, 55, 61, 67, 69, 75, 82, 83, 84, 85, 91, 92, 94, 104, 117, 105, 125, 127, 131, 132, 139, 145, 156, 163, 175, 176, 201, 202, 229, 234, 238, 239, 240, 242, 253, 260, 261, 264, 278, 281, 345, 388, 390, 396, 398, 399, 400, 401, 403, 405, 407, 410, 411, 414, 415, 416, 424, 426, 429, 433, 438, 441, 442, 447, 448, 460, 461, 465, 474, 475, 476, 479, 480, 487, 508, 512, 517, 519

Opposing Comments (Total opposing comments: 191)

8, 9, 11, 14, 16, 17, 20, 21, 27, 29, 32, 36, 39, 40*, 41, 44, 48, 53*, 57*, 58*, 60, 61, 62, 63, 65, 68, 71, 72, 74, 76, 81*, 86, 87, 88*, 89, 96, 99*, 101, 103*, 106*, 110, 112*, 116*, 118, 123*, 128*, 129*, 130*, 133, 134*, 135*, 136*, 137*, 138*, 140, 142*, 143*, 144, 146*, 147, 148, 149*, 151, 154*, 157*, 158*, 159, 160, 162, 164*, 167, 169, 174*, 193, 195*, 200, 205, 206*, 207*, 208*, 209*, 210*, 211*, 214, 215, 216, 217, 219*, 221, 230, 231, 232, 237, 241, 243, 248*, 249, 256, 257, 258, 267, 271, 272, 274, 276, 279*, 280, 283, 284-296*, 297-299*, 300*, 301*, 302*, 303*, 346-356*, 357*, 359, 360*, 361*, 362, 364, 365, 366, 368, 369*, 370, 371, 389, 391, 392, 393, 394, 395, 397, 402, 404, 406, 408, 409, 412, 413, 420, 425, 440, 449, 450*, 451*, 454, 456, 458*, 459*, 463, 467, 468*, 473*, 477*, 478, 500, 502, 503, 507, 510, 511*, 513, 515*, 516, 522

* Indicates comment is a form letter. (Some of the form letters include personal comments.)

Miscellaneous Comments: (Total miscellaneous comments: 2)

6, 491

Total Comments: 294

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

AMERICANS WITH DISABILITIES ACT (ADA)

Comment Summary (Total Comments: 330)

There are 330 public comments that concern ADA. Of the 330, there are 21 that express full support for ACIR's proposed recommendations; 46 that express support for some ACIR proposals and opposition for other proposals; and 258 that contain only opposing comments. Five letters contain miscellaneous comments that neither support nor oppose ACIR's proposals. The comments under "Mixed Support / Opposition" generally included language supporting some flexibility in requirements or schedules, increased federal funding, or the consolidation of ADA enforcement into a single federal agency; while at the same time opposing other ACIR recommendations. [Note: 121 of the opposing comments were on pre-printed form letters. 198 of the letters with ADA comments also contained comments on IDEA.]

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Persons with disabilities not represented on ACIR (8)
- Under Section 504, public entities have had 20 years to comply (37)
- Community Development Block Grant and other funds are available for ADA projects (10)
- ADA is a civil right / not subject to ACIR's review under P.L. 104-4 (163)
- ADA is clear and concise on compliance / sufficient technical assistance is available (11)
- Oppose single ADA enforcement agency at the federal level (24)
- ADA is already flexible (51)
- Oppose elimination of private right-of-action (106)
- Local governments are hostile to the disabled / will abuse flexibility of implementation (49)
- ADA creates a positive economic benefit / making people productive and independent (112)
- ADA standards should not be made voluntary or optional for local governments (152)
- Public & private sectors should be treated same / government should set example (6)
- State and local governments should be encouraged to work with disabled groups (7)
- Personal experiences with discrimination - do not change the law (92)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Support single enforcement agency on the Federal level (19)
- Support some limitation on private rights of action (2)
- Support flexible schedules or requirements (21)
- Support more money or more flexible uses of money (40)
- Support more technical assistance, education, or Federal oversight (27)
- General support for ACIR's recommendations (16)

Miscellaneous Comments:

- Recommend DOJ certify model housing codes as equivalent to ADA requirements (2)
- Other issues (3)

AMERICANS WITH DISABILITIES EDUCATION ACT (ADA)

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log.]

Supportive Comments (Total supportive comments: 21)

15, 52, 64, 77, 79, 109, 152, 161, 163, 168, 172, 203, 269, 363, 422, 423, 431, 432, 446, 499, 504

Mixed Support / Opposition (Total mixed comments: 46)

5, 13, 14, 18, 32, 49, 55, 61, 83, 84, 85, 90, 104, 108, 125, 133, 139, 145, 150, 155, 198, 228, 229, 234, 235, 238, 261, 266, 271, 278, 390, 433, 438, 441, 447, 448, 453, 460, 474, 475, 476, 483, 491, 508, 512, 517

Opposing Comments (Total opposing comments: 258)

1, 4, 8, 9, 11, 16, 17, 20, 21, 23, 27, 29, 42, 44, 45, 48, 53*, 57*, 58*, 60, 61, 62, 63, 65, 67, 68, 69, 71, 73, 74, 75, 76, 81*, 86, 87, 88*, 89, 91, 93, 95, 96, 97, 99*, 100, 101, 103*, 106*, 110, 112*, 113, 116*, 117, 118, 119, 120, 122, 134*, 136*, 137*, 138*, 140, 143*, 144, 146*, 147, 148, 149*, 154*, 157*, 164*, 166*, 167, 169, 170*, 173, 174*, 175, 176, 182-190*, 191, 193, 196, 200, 201, 202, 204, 205, 206*, 207*, 208*, 209*, 210*, 215, 217, 218, 219*, 220, 221, 222, 225, 230, 237, 239, 241, 242, 243, 244, 248*, 253, 256, 257, 258, 260, 264, 265, 267, 268, 270, 272, 274, 276, 277, 279*, 280, 281, 282, 283, 284-296*, 297-299*, 300*, 301*, 302*, 303*, 304-341*, 342, 345, 346-356*, 358, 359, 360*, 361*, 362, 364, 365, 366, 368, 369*, 370, 371, 372-374*, 378*, 388, 418, 419, 424, 425, 426, 430, 439, 440, 442, 449, 454, 457, 459*, 463, 469, 470, 478, 488*, 490*, 500, 503, 505, 506, 507, 510, 511*, 513, 514, 515*, 516, 520*, 523, 524
* Indicates comment is a form letter. (Some of the form letters include personal comments.)

Miscellaneous Comments: (Total miscellaneous comments: 5)

3, 6, 15, 165, 486

Total Comments: 330

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # **Organization**

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

ENDANGERED SPECIES ACT

Comment Summary (Total Comments: 20)

There are 20 public comments that concern the Endangered Species Act (ESA). Of the 20 comments, there are 14 that express full support for ACIR's proposed recommendations, 3 that contain only opposing comments, and 3 that express support for some ACIR proposals and opposition for other proposals. Respondents generally feel that the report correctly calls for an expanded role for state, local, and tribal governments in implementing the ESA. Continued federal standards, monitoring, involvement, and funding, should accompany any increased role for state, local, and tribal governments.

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

- States and local governments should not have an official role in the management and planning decisions affecting the listing process beyond the traditional consultation and full notice and comment requirements currently in effect (2)
- Exemptions to ESA should not be applied more extensively to minimize social and economic impacts of recovery planning and listing procedures (3)
- Economic development is not impacted or impaired by ESA requirements (2)
- Oppose increased scientific peer-review in listing process (2)
- Oppose increasing flexibility or reducing federal standards (2)
- General opposition to ACIR recommendations (1)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

- States and local governments should have an official role in the management and planning decisions affecting the listing process beyond the traditional consultation and full notice and comment requirements currently in effect (10)
- Exemptions to ESA should be applied more extensively to minimize social and economic impacts of recovery planning and listing procedures (6)
- Local governments have inadequate decision-making authority (6)
- Economic development is impacted or impaired by ESA requirements (3)
- Support increased federal funding for ESA (2)
- Support increased scientific peer-review in listing process (1)
- Support increasing flexibility or reducing federal standards (2)
- General support for ACIR recommendations (3)

Miscellaneous Comments

- Cost benefit analysis use be used in listing decisions
- Incentives rather than penalties should be used to encourage species protection
- Citizen suits should not be limited
- ACIR recommendations are too general

ENDANGERED SPECIES ACT

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log]

Supportive Comments *(Total supportive comments: 14)*

77, 152, 161, 199, 168, 198, 223, 236, 428, 446, 481, 504, 509, 529

Opposing Comments *(Total opposing comments: 3)*

84, 387, 495

Mixed Support / Opposition *(Total mixed comments: 3)*

124, 491, 492

Total Comments: 20

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

DAVIS-BACON RELATED ACTS

Comment Summary *(Total Comments: 22)*

There are 22 public comments that concern the Davis-Bacon Related Acts. Of the 22, there are 17 that express support for ACIR's Davis-Bacon Related Acts proposal, 4 that express opposition to ACIR's proposal, and 1 technical comment. Four of the 16 supportive comments expressed support for a repeal of the Davis-Bacon Act itself.

Reasons Given for Opposition to ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- D-B Related Acts protect against declining wages (2)
- D-B Related Acts protect local economies (3)
- D-B Related Acts are not unfunded mandates -- they only apply to grants (1)
- Provisions in Related Acts concerning D-B are reasonable conditions-of-aid (1)
- Repeal is not necessarily a budget savings (2)
- Recordkeeping burdens have been reduced (1)
- Repeal will hurt apprenticeship programs (1)
- Support reform legislation now pending in Congress (1)

Reasons Given for Support of ACIR's Proposal

[(#) indicates number of letters that include the comment.]

- General expression of support (4)
- Support revise threshold or other modifications to current laws (11)
- Express concerns with specific provisions in current law (5)

DAVIS-BACON RELATED ACTS

Key to Comment Log

[The number is the identification # given the letter as shown in the first column of the comment log.]

Supportive Comments (Total supportive coments: 17)

33, 77, 111, 152, 161, 197, 236, 269, **423**, 431, **432**, **433**, 446, **485**, 491, 499, 504

[Note: The comments listed in **bold** suggested full repeal.]

Opposing Comments (Total opposing comments: 4)

84, 254, 436, 472

Miscellaneous Comments (Total miscellaneous comments: 1)

6 (Technical Comment)

Total Comments: 22

NOTE: The comments in the following letters from public interest groups are not included in the above totals. See separate table under Tab E summarizing the issues raised by these groups.

Comment Letter # Organization

531	National League of Cities (NLC)
532	National Conference of State Legislatures (NCSL)
533	National Association of Towns and Townships (NAT&T)
534	The United States Conference of Mayors (USCM)
535	International City / County Management Assoc. (ICMA)
536	National Governors' Association (NGA)
537	National Association of Counties

REQUIRED USE OF RECYCLED CRUMB RUBBER

Comment Summary (*Total Comments: 9*)

There are 9 public comments that concern required use of recycled crumb rubber. Of the 9, there are 6 that express full support for ACIR's proposed recommendation and 3 that are opposed.

Reasons Given for Opposition to ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Oppose repeal of required use of recycled crumb rubber (2)
- Required use of recycled crumb rubber is not costly (1)
- Required use of recycled crumb rubber is a condition-of-aid, not a mandate (1)
- Use of recycled crumb rubber is environmentally sound (1)
- Use of recycled crumb rubber is effective (1)

Reasons Given for Support of ACIR's Proposals

[(#) indicates number of letters that include the comment]

- Support repeal of required use of recycled crumb rubber (4)
- Required use of recycled crumb rubber is costly (2)
- Recycled crumb rubber use has unresolved environmental, health and safety issues (1)
- Use of recycled crumb rubber is ineffective (1)
- General support for ACIR recommendation (3)

REQUIRED USE OF RECYCLED CRUMB RUBBER

Key to Comment Log

[The number is the identification # given to the letter as shown in the first column of the comment log]

Supportive Comments *(Total supportive comments: 6)*

77, 152, 161, 236, 432, 446

Opposing Comments *(Total opposing comments: 3)*

6, 199, 528

B

COMMENT LOG

#	NAME & ADDRESS	COMMENT TOPIC
1	David Pfeiffer Department of Public Management, Suffolk University (Boston, MA?)	ADA—is a civil right; cost not high relative to federal funding for highways, etc.
2	Harry M. Thompson 3415 East Cody Ave Apt. C1 Tucson, AZ 85716	Misc.—Repeal social security the mother of all unfunded mandates
3	Stephen R. Gold, Attorney at Law 125 S. 9th Street, Suite 700 Philadelphia, PA 19107	ADA—[Letter to All Commissioners] Quotes data from court settlement in Philadelphia that are different from Rendell statement.
4	Kenton Dickerson, Executive Director Tri-State Resource and Advocacy Corp, Inc. Independent Living Services Center, 3641 G Brainerd Rd, Chattanooga, TN 37411	ADA—Civil Rights laws exempt from law; Comments on Options. 1C) standards are clear, would add duties to understaffed federal agencies. 2) law is flexible and federal \$ is avail, already had 21 years (504) to comply. 3) don't remove individual right to sue.
5	Mike Fredholm 168 Panoramic Drive Camdenton, MO 65020	ADA—Object to "Suspend" words; but support long term goal of accessibility over trying to hold unattainable schedules that bankrupt local government; but, if mention suspend or voluntary, all planning will stop. Thank you for the recommendations and support for ADA provisions. Local leaders can get relief now if don't have \$ to fix problems.
6	Joseph F. Zimmerman c/o Richard P. Nathan, Director, The Rockefeller Institute of Government, 411 State Street Albany, NY 12203-1003	General—Concern about mix of mandates and conditions-of-aid. Citizen Suits—Federal agencies lack resources to monitor; Congress recognized this when enacted statutes allowing policing by individuals and public interest groups.

7 Betty Livingston
Parents Educating Parents in Mississippi,
9155 Mason Street
Olive Branch, MS 38654

IDEA—Law should be implemented as originally intended; \$ should be increased; withhold \$ from Universities that don't train teachers about disabilities; states/locals will not implement IDEA; few parents can afford due process hearing or court—"If the DoED . . . were implementing IDEA the way it is written, there would be no reason for parents to have to go to court." (i.e. DoED should monitor); taking away individual right of action is contrary to First Amendment. Don't change IDEA, implement and monitor it.

8 Richard S. Rowland, Chief Operating
Officer
United Cerebral Palsy of Central MD
1700 Reisterstown Road, Suite 226
Baltimore, MD 21208-2935

IDEA—The recommendation guts the essential due process protections in the law would deny access to the courts for these families who have exhausted other means to resolve disagreements with schools.

9 Rev. David C. Johnston
206 NE 5th Street
Ankeny, IA 50021-1839

ADA / FMLA / BOREN / IDEA—Offended by recommendations. CDBG funds can be used for curb cuts; "I would suggest that state and local governments be empowered to enforce ADA as it applies to them through Titles I, II, III, and the "gaps" in information and improved coordination be sought rather than the reverse." Public employees should be allowed the benefit of family leave provisions. No viable reason seen to recommend repeal of the Boren amendment. The recommendation to eliminate court challenges to the IDEA by individuals is contrary to human need and the U.S. Constitution.

10 A. G. Farnell
20 Straub Lane
Petaluma, CA 94952-1702

Misc.—Clean water; affirmative action; education mandates (bilingual); ADA; underground storage tanks; lead paint; smoke detectors; septic tanks; Medicaid (should mandate and pay for health care of poor); ESA; global warming; FDA (child-proof bottles; safe lighters/matches) food standards; schools have so many mandates not enough time to teach; social workers vs. liberated women; cougars, chickens & skunks; CAA (smogging tests); FCC(must carry local stations).

11 Greg M. Howard
See Director, Personnel Services
#17 United Cerebral Palsy of Ulster
County, Inc.
P.O. Box 1488
Kingston, NY 12401

ADA / IDEA—Must maintain ADA "to guarantee and enforce the constitutional rights of all people . . ." IDEA "does not usurp the state authority -it sets a national standard for all Americans. The statute is intended to assist states to meet their constitutional duty." Strongly oppose recommendations "which essentially would negate the due process protections in the law."

12 Stephen F. Campbell
Vice President of Safety
American Trucking Associations
2200 Mill Road
Alexandria, VA 22314-4677

CDL: Drug/Alcohol Test—Agree some of DOT's rules "impose unnecessary burdens and cost;" but, the rules "serve a useful purpose and promote public safety by deterring and detecting" abuse. "The costs and burdens of compliance are no different for small carriers that they are for small, rural communities." . . . strongly encourage ACIR to recommend "the federal government continue to subject State and local employees to the rules, but to strive to make them more flexible and cost-effective."

13 Richard J. Minogue
Executive Director
Advocacy and Resource Center
P.O. Box 826, 9 Industrial Boulevard
Plattsburg, NY 12901-0826

CDL: Drug/Alcohol Test / Boren / IDEA / ADA / FMLA—CDL: testing for this group of drivers (transporting school children and disabled) is a necessity and a wise form of protection. **Medicaid (Boren):** it is incumbent upon our society and government funding to assist in maintaining a reasonable quality of life for these individuals (persons in nursing and intermediate care facilities). **IDEA:** Support increased funding for IDEA to assist states and school districts to comply; an alternative dispute resolution practice could be a positive addition to the law; do not support elimination of family's right to bring legal action should a school district or state refuse to provide an appropriate educational program. **ADA:** Some clarification in ADA is needed We are currently involved in a lawsuit against a town . . . fully endorse the designation of a single federal ADA enforcement agency to address ADA legal actions. **FMLA:** unfair to repeal provisions regarding compliance of state and local agencies and not repeal the same for private agencies. It is suspected that the pressure for this change comes from unions who are not used to having limits set on the time off their membership can have.

14 Richard B. Treanor
Attorney
613 4th Place, SW
Washington, DC 20024

ADA / IDEA [Summarizes two letters]—Object to the part that wants to take away the right of the individual disabled person to sue under ADA or IDEA. ACIR's general viewpoint is that of the extreme Republican right, namely the unproved and erroneous assumption that states can do it better that the federal government. Concern expressed about recommendation for creation of a new federal agency or at least a new layer of bureaucracy with exclusive jurisdiction over ADA matters instead of the several doing it. No doubt some fine tuning should be made in IDEA and ADA. Second letter expresses positive support for ADA as currently written.

- 15 Paul K. Heilstedt, P. E.
Chief Executive Officer
Building Officials & Code Administrators
International, Inc.
4051 West Flossmoor Road
Country Club Hills, IL 60478-5795
- 16 Russ Rougeau, Executive Director
United Cerebral Palsy of Northern Nevada
255 Glendale Ave, Suite 3
Sparks, NV 89431
- 17 Pamela Carroad, Executive Director
United Cerebral Palsy of Ulster County, Inc.
P. O. Box 1488
Kingston, NY 12401
- 18 Lou Ann Kohl
Program Coordinator
LINK (Living Independently in Northwest
Kansas)
202 Centennial Center
Hays, KS 67601
- 19 Perry A. Zirkel
Professor of Education and Law
Lehigh University
College of Education / Mountaintop Campus
111 Research Drive
Bethlehem, PA 18015-4793
- ADA—I find the report comprehensive in its scope and reasonable in its findings. Suggested another aspects of change for ADA: the regulatory burden on DOJ and state and local government will be eased if DOJ would certify the model codes as equivalent to the requirements of ADA (An attached letter to DOJ expressing support for certification of model codes is signed by Senators Harkin, Dole, Kennedy, Hatch, McCain.)
- ADA / IDEA / FMLA—ACIR recommendations would deny access to courts for these families (families seeking public education for disabled children) who have exhausted every other means of eliminating discriminatory practices against their children to resolve disagreements with the schools.
- ADA / IDEA—ADA is needed to guarantee and enforce the Constitutional rights of all people; IDEA protects students with disabilities and must be a federal mandate; It does not usurp the States authority—it sets a national standard for all Americans. The statute is intended to assist states to meet their constitutional duty; strongly oppose recommendations which essentially negate the due process protections in the law.
- ADA / IDEA—[These laws] are our civil rights. I agree that the federal government should stand behind the amount of repayment in which they agreed to pay (for IDEA). I agree there is a problem with implementation of the ADA. An increase in technical assistance and education information to state and local government and federal funding to assist with existing facilities would be beneficial. State and local government need to have a better understanding of the ADA and that they do not have to spend money on ADA compliance that they cannot afford.
- IDEA—This letter enclosed a Montana Law Review article proposing changes in the due process requirements of IDEA. Excellent analysis of situation. There is a quote from a judge saying: “Yet, personality disputes and disagreement over inconsequential details of an educational program have divided the persons most important to Tony’s (a disabled child) future educational development.” The author’s point is most court cases are not about constitutional rights; they are arguments about details in an individual case or legal fees. The article says many court decisions “do not serve as generalizable precedents.”

20

Dr. Thomas H. Clapper
Federal Action Monitor
Oklahoma State Senate
State Capitol, Room 309
Oklahoma City, OK 73105

General—Submitted copy of Newsletter describing ACIR report and a SIAM Intergovernmental News article about mandate reform. His main point is that in terms of federal mandates there is not only a lack of funding but a lack of information. . . . Not only are the funds not included with the mandates but neither is the necessary information for state and local governments to comply.

21

John W. Foley, Executive Director
The ARC
3500 Comanche NE, Bldg. G
Albuquerque, NM 87107

ADA / IDEA—It is obvious the Commission is not in touch with the lives of American citizens with disabilities. The Commission's preliminary proposal to exempt state and local governments from compliance with ADA and IDEA is a slap at the integrity and value of millions of people with disabilities. . . . strongly opposes the recommendations . . . Please, please, reconsider.

22

Yvette Fang
Social Services Coordinator
United Cerebral Palsy of San Francisco
660 Market Street, Suite 401
San Francisco, CA 94104

IDEA—Of particular concern is your proposed amendment that "any court challenges based on the federal law should be brought by state or federal agencies, not by individuals . . . lawsuits occur only as a last resort. . . . If ACIR's recommendation is implemented, the families will have no place to go after other venues to resolve disagreements with the schools have been exhausted, which essentially guts the due process protections in the law . . . voicing my strong opposition"

23

Barry Weintraub, Esq.
12371 Manchester Way
Woodbridge, VA 22192

ADA—Strongly object to the elimination of a private cause of action for civil rights violations involving the disabled. When a county government . . . has violated the civil rights of an individual, the citizen should be able to exercise his federal rights in court directly. . . . There are . . . many local governments that are indifferent or hostile to the needs of disabled individuals— which has resulted in and continues to result in the abuse of individuals. DOJ . . . hardly has the resources to fight many municipal authorities. . . . While DOJ has done some fine ADA work, there is no reason to try to make them the "people's enforcer" when they are really the "President's lawyers." . . . Does your group really want to expand the role of the federal government?

Joe Langenstein
Caterpillar Inc.
Standards Engineering Technical Center
Building F
P. O. Box 1875
Peoria, IL 61656-1875

SDWA / Metric—For the most part I agree with the findings of the Commission. Having been involved with a small community water system . . . I am very aware of the significant costs inflicted upon it for unnecessary testing. . . . Some mandates . . . are so ridiculous that I don't want them with or without funding. . . . this country is on a road of change to use the metric system of measurement. . . . There are many inefficiencies resulting because of our need to support two systems of measurement. . . . A very large percentage of the population will probably not benefit directly by the change to the use of the metric system of measurement. However, indirectly everyone will benefit because as a country we will function more efficiently.

Reese Thomas, Jr.
511 Spring Street
Moosic, PA 18507

IDEA / ADA—I feel to accept these modifications would be taking a giant step backward for all persons. . . . The government in this country must take a hard stand to enforce these laws as written. Revising a law for the convenience of some is detrimental to those for whom these laws were intended to benefit.

Nancy D. Safer
Interim Executive Director
B. Joseph Ballard
Assistant, Executive Director
The Council For Exceptional Children
(CEC)
1920 Association Drive
Reston, VA 22091-1589

IDEA—The federal government . . . is not "mandating" educational services to children with disabilities; the Constitutionally guaranteed right of children with disabilities to a free and appropriate public education was determined by a number of critical court cases. . . . 1) CEC agrees with the ACIR that the federal government should live up to its commitment to provide 40 percent of the APPE for every child served . . . we reject the ACIR's assertion that IDEA is an unfunded federal mandate. 2) States and local school districts do not have a financial incentive to identify children with disabilities. What little money the federal government provides does not offset the state and local resources necessary for providing education services to children served under IDEA. 3) While we understand the need to keep paperwork to a minimum and have made recommendations that would further streamline the IEP process, CEC strongly supports having the IEP requirements in federal law. 4) In anticipation of the reauthorization of IDEA, CEC sent Congress and the Administration recommendations for strengthening and improving the law. One of our recommendations for the reauthorization is to require States provide mediation as an option for parents. We believe that special education has become too litigious and that alternative dispute resolution practices should be used to solve disagreements between parents and schools concerning the education of a child eligible for services under IDEA. CEC, however, strongly disagrees with the ACIR's recommendation that alternative dispute resolution practices should be required before parents can use due process. Mediation will not work if both sides have not come to the table willingly.

27 Dave Hampstead
[telephone message—no address left]
(517) 893-2365—Michigan

ADA—"Don't change ADA." He successfully got job back in an ADA lawsuit—the first suit in Michigan; the third suit taken to the Supreme Court.

28 Sally Koenecke
7061 Halstead Drive
Mound, MN 55364

IDEA—... keep IDEA as is. It has been the foundation for my daughter's educational plan. . . . The IEP process and the knowledge that parents can enforce it through due process has forced the district to really listen to the parents. It forced them [school officials] out of their bureaucratic refusal to work with the parents.

29 Patricia Petlak, M. A.
21251 W. Beechwood Court
Mundelein, IL 60060

IDEA / ADA—I am one of the millions who have had [to] be dragged through our system to provide an appropriate education for my daughter. We had two years of litigation before my daughter, who is disabled was allowed to be educated in her home school in a regular classroom. . . . You are suggesting denying individuals and their families access to the courts if needed after families like ours who have exhausted every other means against discrimination. We oppose the ACIR recommendation, which guts the essential due process protections in the Law.

30 Jean Savage
62 S. Church Street
Carbondale, PA 18407

IDEA / ADA—Please vote against watering down the IDEA and ADA laws. The two laws have made life a lot better for my daughter and others like her. Please help to keep these laws intact.

31 John J. Meehan
Member
Yorktown Central School Board
1621 Summit Street
Yorktown Heights, NY 10589

IDEA—... you are on the right track with your recommendations. Unfunded mandates, especially federal mandates, are actually destructive and remedial action is urgently required. As a school board member, I am particularly concerned with the IDEA. I believe you are absolutely correct to address this area, and I am supportive of your initial recommendations. The act, as it now stands, has played havoc with our school systems. Clearly immediate reform is necessary. . . . Please don't crumble. Reform is absolutely necessary and vital, and I again applaud your efforts. Please, forge ahead!

Chris Hubert
3204 Tomahawk
Lawrence, KS 66049

IDEA / ADA / FMLA— 1) I oppose the recommendation that only state or federal agencies should be able to challenge IDEA in court. This would deny access to courts for families who have exhausted every other means of eliminating discriminatory practices. . . . 2) I oppose the recommendation concerning the ADA that legal action against state or local governments should be limited to actions brought by the federal government. The ADA should not be changed—it already has flexibility to ensure fairness to all parties. . . . ADA has built-in leeway in the form of its not requiring governments to make improvements that would create an undue administrative or financial burden and in its recognition of “good-faith efforts.” I would not be opposed to federal funds being appropriated to facilitate and hasten ADA compliance. 3) Employees of state and local governments have the same needs for protection afforded by the FMLA as all other Americans, and the removal of the protections for certain categories of employees seems ridiculous.

Dr. William H. Wheeler
Reeds Spring R-IV School District
Reeds Spring, MO 65737

Davis-Bacon Related Acts— . . . encourage exemption of taxpayer-paid public works projects from the requirements of the Davis-Bacon Prevailing Wage Acts. Billions of dollars of taxes voted for children’s education have been spent for unnecessary construction costs rather than instruction or other educational resources. Schools need this exemption.

John G. Melrose
Commissioner
Department of Transportation
State of Maine
Transportation Building
16 State House Station
Augusta, ME 04333-0016

Metric—Although we agree with the philosophy of the report regarding the roles of federal, state, and local, and tribal governments as they relate to mandates, repealing the metric mandate now would be extremely short-sighted. The Maine Dept. of Transportation . . . has invested a considerable amount of time, money, and employee-hours in converting to metric. . . . We are now in a very difficult position, essentially having completed our conversion to the metric system, while the Federal government continues to waffle. This lack of leadership has created questions from the private sector on just how serious Washington is about converting to metric and added unnecessary pressure upon the Departments from contractors, suppliers, and local governments to slow down or stop current progress altogether.

35 Ruth M. Bauman
6962 South 880 East
Midvale, UT 84047

FLSA / FMLA— I work for the Wage and Hour Division, DOL. . . . Since 1985, we have through many investigations, found abuses by public employers which were worse, in many instances, than anything observed in the private sector. Those abuses continue. . . . we find the FLSA blamed for many costs which in truth are not actually required by the Act. . . . There are other examples where the FLSA would allow the employer to make changes which would result in no overtime, but managers in the public sector refuse to take advantage of these provisions, i.e., the ability to have different workweeks or work periods for each employee or each department. . . . Employees in the public sector have the same needs as those in the private sector. . . . Please consider the employees when you advocate the repeal of these laws. Please ask them for their point of view.

36 J. L. Salo
4343 12th Ave. South
Minneapolis, MN 55407

IDEA—My son is proudly learning to read, with his non-disabled peers, in a real classroom. . . . This is a basic civil right—an education. It is also a basic civil right to be able to be heard in court when all else fails. . . . Keep the court option open to people.

37 Andrea Wolper
130 West 67th Street #9F
New York, NY 10023

FMLA / [FLSA]—I am horrified to think that the FMLA and the Equal Pay Act are targeted for repeal as they apply to state and local governments. Repeal of these acts—both of them hard fought for and hard won—will be a step backward, and may open the door to further such exemptions.

38 Adam Yarmolinsky
Regents Professor of Public Policy
University of Maryland Baltimore County
(UMBC)
5401 Wilkens Avenue
Baltimore, MD 21228-5398

[FLSA / FMLA /OSHA]—[No specific law mentioned in letter; but, says concerned about “occupational, health and safety protections.”]—Expresses strong opposition. It is ironic that, in the same month that Congress began abiding by the laws faced by other employers, ACIR would recommend exempting state and local governments from many of the same laws. [Much of the language is from OMB Watch e-mail draft letter.]

39 Kathy Fairbanks / Connie A. Schmitz
Burke Public Schools
P.O. Box 382
Burke, SD 57523

[IDEA]—[no law mentioned by name; but a reference made to “special education.”]— . . . work in the field of special education as well as having handicapped children or our own. . . . We are very concerned about the Istook “Silence America” Amendment. We have been given the responsibility of these children. Please don’t take away our right to advocate for them.

- 40 Mrs. B. Peterson
One Oakridge Drive
Old Lyme, CT 06371
- IDEA**—[IDEA postcard]—This is a message of outrage in response to your recommendation that IDEA be funded at its full level or relieve states from its costly and prescriptive mandates and that only federal or state agencies could bring a challenge to a due process decisions in federal or state court and thus eliminate our rights as parents. My child's future education is at stake. Please reconsider. [Handwritten, modified #123]
- 41 Judith Simon
8 Simpson Place
Stoney Brook, NY 11790
- IDEA**—I am worried about recommendations to shift funding provisions and authority to implement decisions to the state and local levels, as well as the proposed elimination of right of due process procedures by the individual. . . . If the changes become law, I will not be able to send my son to public school.
- 42 Carla Lawson, Executive Director
Candace Low, Associate Director
Ability Resources
1724 East 8th Street,
Tulsa, OK 74104
- ADA**—The suggestions to modify the implementation elements is outrageous. . . . Without appropriate implementation, the legislation is useless. Your report mentions the ADA presents a social benefit. It presents much more than a social benefit. The ADA represents our economic survival. The ADA specifically addresses the issues of undue hardship and provides for those situations where state and local government entities and private businesses cannot comply.
- 43 E. Bentley Lipscomb
Department of Elder Affairs
State of Florida
4040 Esplanade Way
Tallahassee, FL 32399-7000
- FLSA / FMLA / OSHA / Drug & Alcohol / Boren**— . . . Re: federal governments failure to recognize state and local government's public accountability . . . All of these federal laws exist because not all states or localities chose to put the public good above private and special interest. State and local government workers deserve the same protections as workers in the private sector. The rights and regulations stipulated in [all listed laws] should not have to be fought for again in fifty state legislatures. Boren Amendment: . . . The amendment is intended to ensure that [hospitals, nursing homes, and intermediate care facilities] will admit patients on Medicaid and will give them adequate care. I believe this amendment is needed
- 44 Ann Branden, et al
Lawrence Independent Living Resource
Center
1910 Haskell
Lawrence, KS 66046
- IDEA / ADA / FMLA**—Oppose recommendations that only federal government can bring legal action; oppose compliance relieve if no funds increase because there are creative ways to get funding; the regulations gave adequate time; and, ADA already has an undue burden language. Oppose recommendation to “remove the protections of the Family Medical Leave Act for people who work for state and local government.

- 45 **Mary Kay Sanders**
774 Northcross #139
Austin, TX 78757
- 46 **R. Benjamin Gribbon**
Minnesota Department of Transportation
Transportation Building
395 John Ireland Blvd.
Saint Paul, MN 55155-1899
- 47 **Keith Shaw**
Manitowoc Public School District
Pupil Service / Special Education
1010 Huron Street
P. O. Box 1657
Manitowoc, WI 54221-1657
- 48 **Jeri Johnson, et al**
1908 E. 19th #E-46
Lawrence, KS 66046
- ADA**—[ADA postcard]—Your organization cannot recommend voluntary compliance with the ADA. This legislation has provided me with the necessary access for independent living. We are just beginning to see the positive effects of ADA and you cannot take it away.
- Metric / Drug & Alcohol**—(1)Metric conversion does . . . serve a national purpose, by adopting a standard used in the world market. This will dramatically affect the ability of the United States to import, export, and share technology. (2) The cost of drug and alcohol testing in relation to the undemonstrated need for testing, its apparent violation of Constitutional principles, and its reach well beyond the workplace suggests that the Omnibus Transportation Employee Testing Act should be repealed entirely. (3) [a general comment was made expressing support for retaining laws that protect citizens.]
- IDEA**—Support the Commission's work requiring alternative methods of dispute resolution, barring individuals from filing suits under the law due to the extreme financial burden on districts and parents quick reaction to resolve conflicts. . . . Agree with . . . only Federal agency responsible for enforcement of the law should be permitted to sue state and local government.
- IDEA / ADA**—[Identical to letter #44]

Lawrence W. Berliner
General Counsel
Office of Protection and Advocacy for
Persons with Disabilities, State of
Connecticut
60B Weston Street
Hartford, CT 06120-1551

IDEA / ADA / FMLA—IDEA: We hear the constant drum beat over the costs of special education, rather than the benefits . . . Without federal regulations . . . how are state and local educational agencies to determine that special education programs and policies conform to nationally recognized standards . . . ? Some states encourage alternative dispute resolution by offering use of mediation . . . [and] federal regulations recognize mediation provided it doesn't deprive due process rights. Appeal rights to state and federal court must be maintained if student is to have full panoply of due process rights to secure rights and benefits of IDEA. Court costs and attorney's fees are smoke screen since costs and fees obtained by students and families are eclipsed by attorney's fees routinely paid by local school districts each year, even with no due process hearings pending. ACIR's recommendations do not address abuses by school districts . . . [and,] while thoughtful, are adverse to educational interest of children with disabilities. If federal funding is real issue, efforts should be made to increase the federal share of IDEA. *ADA* extends same Constitutional protections to individuals with disabilities that were enacted for other protected groups. [Enclosed letters from Members of Congress illustrate that *ADA* was supposed to be exempt from Unfunded Mandate Reform Act.] *ADA* does not require the retrofitting of state and local facilities. Barrier removal is only triggered for existing structures when an agency renovates or alters a structure. Programs and services located within inaccessible structure must be made accessible [through] creative solutions, such as relocating activities to accessible locations. Agree that a single *ADA* enforcement agency would be preferable, but DOJ should handle Title II and III and EEOC Title I. Disagree with efforts to prevent individuals from filing legal actions against local or state governments to enforce *ADA*; litigation is last resort for this agency. ACIR's recommendation rewards agencies that have ignored Sec. 504 and *ADA* obligations and sends wrong message to communities that have complied. [Enclosed DOJ letter outlining reasons *ADA* should not be suspended or made voluntary.] Existing *ADA* provisions for state and local governments should be retained. We would support designation of Title I enforcement agency and Title II and III enforcement agency and increased technical assistance provided that current materials are determined to be insufficient. *FMLA*: ACIR should consider exempting state or local government from *FMLA*, if state statutes meet or exceed *FMLA* standards. *General*: Many ACIR recommendations are thoughtful, but we have provided comments which represent massive retrenchment upon educational and civil rights of individuals with disabilities rather than regulatory relief contemplated by mandates law.

William A. Brenner, AIA
Executive Director
National Institute of Building Sciences
1201 L Street, NW, Suite 400
Washington, DC 20005

Metric—(1) Language of 15 USC 205b, Section 3(4) “to permit the continued use of traditional systems of weights and measures in nonbusiness activities” cannot be construed to exempt grantees of federal funds from using metric measures. Sect 3(2) requires every federal agency, by a certain date, to “use the metric system of measurement in its procurement, grants, and other business-related activities...” FHWA distributes money through a grant program, the largest construction grant program in the federal government and by any measure a major federal business activity. (2) “Concerns” merely repeat anecdotal and uninformed concerns about the difficulty of adapting to the metric system. Numerous federal metric projects constructed to date unequivocally show that engineers, contractors, and tradesmen readily adapt to using metric measures and quickly grow to prefer them. There have been no shortages of bidders on metric jobs and no discernible increases in projects costs. FHWA and AASHTO have addressed right-of-way issues and developed workable solutions based on dual units in public documents. Idea of local governments needing to produce plans and specifications in both inch-pound and metric is unfounded and shows a serious misunderstanding of the issue. Nothing changes on plans and specifications but the measurement units. Difficulty of metric conversion implied by such hearsay arguments is overstated to the extreme and questions the capabilities of U.S. construction workers. (3) Earlier ACIR working paper was unnecessarily negative and one-sided. Despite recent Congressional action pushing back the FHWA metrication deadline from Oct. 96 to Oct. 2000, 39 states said they still plan to meet the original 1996 date and most of the remaining states said they will delay a year or less. Most states indicate they will be liberal in granting local project exceptions. (4) Doubt highway metrication is an unfunded mandate. Over a 5 year transition, state & local metrication represents, at most, a cost of less than 0.2% of all funds received. If unfunded mandate, it is a terribly small and temporary one. We support ACIR’s examination of unfunded mandates, but hope that federal highway metrication will not be tarred with the same brush as truly questionable mandates. We believe that presenting ways to delay, diminish, or negate metrication efforts does not further intent nor does it serve broad, long-range interests of the American public.

#	NAME & ADDRESS	COMMENT TOPIC
51	<p>Mrs. Marion C. Stewart Federal Public Policy Chair American Association University Women 407 Brentwood Drive Carrcroft Wilmington, DE 19803</p>	<p>FMLA—The idea that there is not “sufficient national interest” in FMLA to justify putting limits on states and locals is an outrage. Anyone that doubts this is a national issue should read The Parental Leave Crisis. If women lose their jobs, families suffer. Taking leave to have child could mean losing job and benefits; this is stressful. Nearly half of DE workforce is composed of women. Employers of mothers with young children do not recognize needs of families. 80-90% of long-term care for elderly is provided by families. Family illness is a crisis and arrangements need to be made. A country that believes in “family values” will do something to alleviate these problems. Doesn’t this qualify as national interest?</p>
52	<p>Jerry D. Williams Executive Director SE KS Area Agency on Aging, Inc. 811 W. Main Street, PO Box J Chanute, KS 66720</p>	<p>ADA—As an administrator, I am not allowed to use reason and common sense in serving older Americans by offering an individual meals on wheels to satisfy ADA requirements. ADA is a dysfunctional federal policy. For example, the total cost to meet ADA requirements in a senior center in Chanute is almost four times the value of the building and comes at a time of reduced funding in <i>Older Americans Act</i>. Cost is being forced on Area Agency on Aging even though the alternative service of a meals on wheels can be provided to the participants. Change ADA so that no older individual would be deprived a meal; provide relief on ADA as applied to <i>Older Americans Act</i>.</p>
53	<p>Gigi Carroll PO Box 390222 Kailua-Kona, HI 96739</p>	<p>ADA / IDEA—Totally disapprove of making these “local option” laws. [See #143]</p>

ADA / IDEA—Litigation is not a barrier to implementation of IDEA. A recently published study of litigation under IDEA shows that the number of judicial decisions since 1992 has decreased. A 1989 GAO study of special education and attorney fees under IDEA found that more issues were being settled informally by parents and schools, not litigation. The problem is not burdensome litigation but access to counsel. Unless there are adequate safeguards available, such as access to counsel to pursue legal action, there is an empty right to secure protections for parents under IDEA. Chances that parents will successfully prevail in administrative proceedings against school districts without an attorney is less than 50%. There is no objective data or statistics that supports the ACIR's report that "the resolution of disputes under IDEA has become overly litigious and adversarial." ACIR's report that states "recovery of attorney fees if parents prevail adds to the costs of IDEA," is factually and legally incorrect. State and local educational agencies cannot use Part B funds they receive under IDEA to pay attorney fees. The recommendation, "any challenge in state or federal court should be brought by state or federal agencies, not individuals" is impracticable and a conflict of interest for state and federal agencies under IDEA. The state and federal agencies have a joint obligation and duty to implement IDEA. The state education agency is ultimately responsible for assuring that each agency in the state is in compliance with the IEP requirements and other provisions of IDEA. The state cannot sue on behalf of a parent. This would constitute a conflict of interest between parent and state. Federal agencies cannot serve; federal agencies cannot determine whether the parent has a right to sue under IDEA because it would represent a potential conflict of interest. Federal intervention on behalf of a parent would usurp the principle of the state's authority in education. The recommendation limiting a parent's right to sue does not limit the right of local education agencies to pursue administrative and legal remedies against parents. Implicit reason is that elimination of the statutory right of individuals to bring court actions becomes the purpose of the report itself. ACIR raised a good point that alternative dispute resolution should be used as an option to litigation. IDEA report should be changed to correct the misleading information and parents should retain the statutory right to bring court actions. The report ignores extensive legislative history of ADA that recognizes substantial cost savings attributable to ADA's passage. Congress believed that it was inappropriate to focus on the costs of compliance by covered entities; ADA would provide economic benefits to society by reducing the deficit, by helping disabled persons out of institutions, and by helping disabled persons off welfare and into the workforce. ACIR's conclusion that the use of "vague and overly broad provisions" has resulted in numerous lawsuits against state and local governments is "spurious at best, and intentionally misleading at worst." For over 20 years, courts have

interpreted the terms "reasonable accommodation" and "undue hardship" as set forth under Section 504 of the *Rehabilitation Act of 1973*. The terms must be determined on a case-by-case basis. To criticize ADA as an unfunded mandate for ambiguous and vague language is merely a subterfuge for watering down the legal requirements of this very important civil rights legislation. To enforce ADA only by the U.S. Attorney General . . . is a blatant attempt to weaken, if not eliminate, an individual's right to pursue legal action. The ACIR recommendation provides no concurrent enforcement for violations of ADA. The right to sue should remain intact.

55 David Eichenauer
Legislative Specialist
AIM [Access to Independence and Mobility]
271 East First Street
Corning, NY 14830
[NOTE: The letter requests that information
be sent to:
116 Lexington Ave. Elmira, NY 14905-
1907]

ADA / IDEA / FMLA / Drug & Alcohol / Boren—ADA is a civil right not a mandate. . . . cannot support [litigation] proposal "because too often the federal government hesitates to file suit." FMLA: Question why state and local governments should be exempt. *Drug & Alcohol*: we find it strange that you would eliminate drug and alcohol tests for commercial drivers when we see what damage drunken drivers can do. *Boren*: repeal will lead to lowering of standards in nursing homes. *IDEA*: While alternative dispute resolution has a place, individuals must have the right to bring court action on behalf of their own children. *ADA*: There are undue hardship protections presently in the law and alternative services may be provided when necessary. Most cities spend only 2% of their budgets on ADA compliance. BOREN must be retained to insure quality of care. *IDEA*: support increase funds but cannot support removal of the of standards. Also, while support alternative dispute resolution, cannot support removal of the right of individuals to bring suit in state and federal court. *ADA*: support increase in technical assistance and educational information and support increase in funding for retrofitting; but, not likely to happen. Strongly object to providing flexibility to state and local governments under ADA.

56

John J. Brady
97 Compo Road South
Westport, CT 06880
[Department of Pupil Services, Westport
Public Schools, 72 North Ave., Westport,
CT 06880-2721]

IDEA—I am very pleased that IDEA was selected for scrutiny. . . while providing absolutely necessary benefits to children with disabilities, this law also creates enormous acrimony and cost at the local public school level. In my view, the federal government . . . [has] created a system which encourages parents to sue school districts when there is a dispute over programming or placement. . . . With the IDEA, parents turn their frustrations regarding having a child with a disability and with a school system attempting to meet the letter of the law as opposed to appealing parents by providing the latest supposed cure, into legal action. It is not uncommon to be contacted first by an attorney when a dispute arises. Schools are being held hostage by the threat of legal action. . . . we find ourselves in a dispute over what boils down to a parent's preference for one approach or placement over what the school is offering. . . . We paid approximately \$15,000 in this one instance for what should have been dismissed as a nuisance claim. The largest increase in our \$7,000,000 special education budget request for the 1996-1997 school year, is \$80,000 for attorney's fees. We spend in excess of \$200,000 yearly for attorney's fees and settlement costs. I fully support your draft proposal to require alternative forms of dispute resolution and to limit court action to governmental agencies. This would go a long way toward directing the parties in conflict to work it out as opposed to calling in the attorneys.

57

Carolyn Sue Long
President
The Long Ranger
6129 Lakeshore Dr.
Dallas, TX 75214

ADA / IDEA—[A pre-printed form letter that says: I _____ do not support watering down the fundamental rights of Americans. I support the full implementation of the *Individuals with Disabilities Education Act* and the *Americans with Disabilities Act* by national, state, and local government.] The following personal comments were handwritten: Access is a civil right. A deadline was set and should be kept! Do not water down the ADA!

58

Claire Woods
Salvation Army Family Treatment Services
Phone: (808) 732-2802 FAX: (808) 734-
7470

ADA / IDEA—I would like to express my **DISAPPROVAL** of the ACIR's recommendations regarding ADA and IDEA "local options." I have worked and watched our communities struggle over the years to reach the point we are at today. Although it does prove difficult for some, I do not feel we should take a step backwards and make the Acts optional, voluntary, suspended or the like. [See letter #143]

59

Michael J. Kennedy
Center on Human Policy, Syracuse
University
805 South Crouse Ave
Syracuse, NY 13244-2280

Misc.—Medicaid: . . . expresses opposition to the National Governors' Association Medicaid / Block Grant proposal. Medicaid is used for wheelchair repairs and Personal Care Assistant services. . . . Do not make unnecessary cuts, not at the expense of the people who need Medicaid to live on a day to day basis.

John T. Porter, President
National Association of Developmental
Disabilities Councils
1234 Massachusetts Ave. NW, Suite 103
Washington, DC 20005

ADA / IDEA— . . . not unfunded mandates, they are civil rights laws. **ADA:** . . . the report ignores the fact that flexibility and reasonableness permeate the ADA statute and regulations. . . . The federal government does provide substantial education and assistance services, and funds 80% of transportation costs, including construction and operation. CDBG may be used to satisfy ADA requirements. . . . the ADA already recognizes and accounts for budget constraints by allowing governments to make good faith compliance efforts. . . . it is likely that governments previously failing to act in good faith would use the modifications [proposed by ACIR] to further delay compliance efforts, further compromising rights under the ADA. . . . the single agency for compliance and enforcement recommended by ACIR would create rather than alleviate confusion. . . . current multi-department participation provides a level of expertise that would simply be unattainable with a single agency. . . . creating a single ADA enforcement agency would diminish expertise and hinder compliance and enforcement efforts. Instead of eliminating the current pool of expertise, increased federal oversight of compliance efforts would be a more effective means to enforce the ADA and provide education and technical assistance. ADA's private cause of action must be preserved. Eliminating the private right of action would greatly reduce ADA protections and result in inefficient, expensive, and intrusive federal supervision of state and local governments. . . . the protection of fundamental civil rights must not be exclusively entrusted to any single person, agency, or even branch of government. **IDEA:** As it stands now, states may elect to receive federal funds under IDEA. Once they make that choice, they must meet certain requirements. Eliminating minimum requirements would allow states to take funding without any accountability. . . . ACIR's suggestion that governmental enforcement and alternative dispute resolution replace parent's current ability to sue to enforce their rights . . . is unnecessary and unworkable. . . . litigation under IDEA simply does not pose a problem. In 17 years, only 1,121 cases have arisen under IDEA. Moreover, the cost of enforcement of IDEA by government agencies would far exceed the cost of private enforcement, would increase bureaucracy, and might well be completely ineffective if the enforcement agency is less than vigilant. Under the current system, parents try to resolve differences with the schools long before they ever consider filing a complaint. Finally, altering the funding scheme will not solve fraudulent labeling of children as "disabled." The grants families procedural protections to ensure that their children with disabilities receive an appropriate education.

61 Lynn Cualey
2216E 600 N
West Lafayette, IN 47906-9014

ADA / IDEA—[Note: This summarizes two letters from same person / same address.] **IDEA:** My two sons benefit from IDEA. Our children with disabilities have a right to an education. Federal government should raise the 8% [funding] to 40%. this would help. **ADA:** I have arthritis . . . I cannot handle stairs. Why should persons with disabilities sit at home because they can't get into a building. Terms "reasonable accommodation" "undue hardship" "readily achievable" and countless other broad expressions—Words they use should be two words with definite definition. If many states could not meet the deadline of January 26, 1995, then the deadline should be extended.

62 Colleen K. Comer
112 5th Ave.
Newcastle, WY 82701-2438

ADA / IDEA—[ADA postcard]—The disabled community, including myself, need your help in keeping our rights with ADA and IDEA intact! Your support of these laws without recommendations to alter would be sincerely appreciated.

63 Mark Palmer
940 E. Fortification St.
Jackson, MS 39202

ADA / IDEA—[Note: This summarizes 11 ADA postcards sent to individual Commissioners] Please help save the ADA / IDEA. We need it now more than ever. People with disabilities depend on these "two" laws to gain access to the society at large. Please help keep our quality of life accessible to all! Keep America an open country. Do not weaken the ADA. . . . It gives me access to my job. . . . Keep the ADA / IDEA intact and free from any amendments. . . . help save the ADA / IDEA from any cuts or amendments. . . . keep America a barrier free nation. Keep the ADA. It allows citizens to work and participate in their own communities.

Steven R. Yaffe
5824 Wood Poppy Court
Burke, VA 22015

Drug & Alcohol / ADA—I am a transit planner. **Drug & Alcohol:** . . . to no longer require state and local employees to be subject to federal testing procedures would. . . have no effect. Victims of accidents . . . would still be able to sue . . . courts would determine whether state and local employers took reasonable measures . . . One could also argue that government employees, whether federal or not, should be subject to the same level of scrutiny as private sector employees. **ADA:** requests more information about funding for paratransit. . . . no federal moneys have been appropriated specifically to support ADA paratransit operating or capital expenses. I agree . . . to designate a single federal ADA enforcement agency. Most ADA activities have much in common. I recommend all paratransit services . . . be consolidated in the Federal Transit Administration. . . . As a corollary to consolidating ADA paratransit service . . . local transit agencies will need more time to achieve compliance with ADA. Rather than requiring aggrieved citizens to petition the Attorney General to sue agencies for compliance, localities should first establish and require use of local systems of dispute resolution. Citizens should retain recourse to due process of their claims (without prior government approval). However, an intermediate level of dispute resolution prior to either the courts or petitions to federal agencies would be an appropriate requirement. . . . congratulate you and the Commission on your efforts.

Thomas P. Hopkins
19 High Street
Spencer, MA 01562

ADA—I am opposed to any reworking of the ADA or the IDEA that would deny an individual his civil rights to education or his right to be an active member of the community in which he or she lives. . . . if the ADA or IDEA were temporarily or permanently suspended the gains that are being made by cities and towns as a good faith effort would come to a halt. Making ADA a voluntary process puts the disabled population back in the role of waiting for charity and the good nature of people to protect their civil rights. That process is demoralizing and can foster resentment. . . . I urge you to provide ample time for public comment and time to do a fair and honest assessment of the ADA and IDEA and their impact on the lives of people with disabilities before you take any action.

Gwenn Chriss
Senior Social Worker
Hennepin County Adult Services
A-1600 Government Center
300 South Sixth Street
Minneapolis, MN 55487-0164

ADA / IDEA—Form Letter [See Comment #154]

Diane Carter
Route 3, Box 37
Unionville, MO 63565

67

ADA / IDEA—With or without IDEA and funding from the federal government, it is still the states responsibility to provide this education. . . . your recommendations . . . would deny access to courts for families who have tried every other means to get what EVERY child is entitled to. . . . ADA . . . gives [persons with disabilities] rights, access, and independence, that everyone else takes for granted These mandates enforce Constitutional rights and provide protection from discrimination for people with developmental disabilities, like my son.

Darlene Cox
394 Village Green, #205
Ann Arbor, MI 48105

68

ADA / IDEA—No members of the panels advocating these mandates represent disability groups. To minimize or undo the wonderful progress these various acts have been able to help accomplish for people with disabilities is a true step backwards. That the Advisory Commission wants to take a broad sweep at what is mandated by the ADA for state and local governments I find truly shocking, also.

Daniel and Brenda Niemeyer
Route 3, Box 9A
Edina, MO 63537

69

ADA / IDEA—Welfare reform may very well be a necessity, but to require that those with developmental disabilities carry the burden is inhumane! We continue to challenge you, as our legislators, to become strong advocates with us! We thank you for the support you've shown for IDEA and ADA. We ask for your continued support of these laws during this critical time.

Leonard L. Haney
142 McKay Road
Saxonburg, PA 16056

70

Drug & Alcohol—These D & A regulations should be repealed. . . . it takes a lawyer to be a local, small second-class township supervisor . . . its more difficult to find local leadership that's willing to serve their community with an ever tighter liability noose around their elected necks . . . we small local governments need exemptions and some immunities to encourage us to exist. . . . I have a CDL . . . primarily, I'm a grader operator and even in winter, I plow with a pick-up truck,—in small pinches I may drive a 10 ton truck about 100 miles in a year, without ever leaving our township borders . . . and I'm one of a vast many who resent being lumped into the same category as those full-time professional truckers . . . thank you for this opportunity to air my disgust . . . you may have a chance to expand the law to include all drivers must be tested for drugs and alcohol—especially cars!—and watch how fast Congress would exempt themselves. . . . On April 15, 1996, 4,000 local township supervisors will be gathered to vote and submit two resolutions to petition the federal Congress to repeal—or exempt, all local governments from the CDL Drug and Alcohol regulations.

Ruth D. Carter
196 Valley Forge Drive
Kirksville, MO 63501

ADA / IDEA—writing to ask that you defend the attack on IDEA and ADA. Individuals with disabilities must be guaranteed equal access to the same education opportunities that are available to all other persons. . . . All Americans . . . must also be guaranteed the right of access to all public, government, and commercial accommodations and facilities that serve the general public.

71

David A. Durdle
2110 Walice
Peoria, IL 61604

IDEA—I urge every caring person to contact their Congressman to urge them to express their stern disapproval of the planned rescission of the IDEA.

72

Melodie Smith
P. O. Box 2115
Dublin, GA 31040

ADA—One concern I have is how can the disability population be represented fairly, when no one on the Commission has a disability? I was amazed that ACIR recommended that ADA requirements should be temporarily, or permanently, suspended, or made voluntary, for communities without the fiscal capacity to comply. . . . if this is not mandated, it won't ever happen.

73

Elizabeth Eshom Reed
HCR 1, Box 4609
Keaau, HI 96749

ADA—Please do not allow Congress to emasculate the recently won laws for the protection and advocacy of the disabled persons . . . to turn the responsibility over to the states will make compliance optional—people will flock to the state with the best laws, if they can, making an undue burden on the taxpayers of that state.

74

Jackie Penney
Rt. 10, Box 232
Laurel, MS 39440

ADA / IDEA—[Letter tells story of her daughter's condition; makes no specific comment on report.] I'm not sure why we have to struggle to pay our taxes, while we have to fight to send our child to school and make sure she has what she needs. As it is, the laws aren't followed unless a lawsuit is filed and that will only cost me more money on top of what is already taken to build the schools.

75

Dorothy Zerger
37 Prospect Street
Newark, OH 43055

ADA / IDEA—The IDEA must be reauthorized without amendments recommended by the commission. The ADA should also be retained in the present form. . . . state and local education and other agencies have shown little effort to provide for the disabled except as required and when required by federal legislation. Strong, well-monitored federal guidelines are necessary to assure the rights of handicapped. I urge you to withdraw your recommendations . . . The federal government must assure the right of the handicapped.

76

- 77 Stephen F. Hoesel
Chair, Iowa Rural Development Council
Midas Council of Governments
200 North 10th Street
Fort Dodge, IA 50501
- All 14**—[The letter expresses support for all ACIR's recommendations and includes explanations for the support.] ACIR's report "is very appropriate in its assessment of various federal mandates as they relate to local governments. The final ACIR recommendations also closely mirror discussions held by the Mandates Subcommittee of the NRDIP.
- 78 Lara Sutherland
17 Beacon Place
Somerville, MA 02143
- FMLA / Equal Pay Act**—... it has come to my attention that the ACIR has recommended that the FMLA and the *Equal Pay Act* be repealed insofar as they apply to state and local governments. We all know that if public employers are exempted from compliance, private employers won't be far behind. I am writing to ask you to reconsider your position.
- 79 L. Graham Hughes
5492 River Thames Road
Jackson, MS 39211
- ADA**—My local "Coalition for Citizens with Disabilities advises in its most recent newsletter that your Commission is accepting public comment on its recommendation to modify ADA. . . . Please let me advise you that I have been deaf for many years and can testify that federal intervention in our society's care for deaf Americans is not needed and is, if anything, counterproductive. The Congress made a monumental blunder in passing this legislation. I hope your Commission will hold steadfast in its efforts to rationalize a misguided idea.
- 80 Vincent F. Callahan, Jr.,
Chair
Virginia Advisory Council on
Intergovernmental Relations (VACIR)
- General Support for all Recommendations**—As Chairman of the VACIR, . . . offer my support for the ACIR. Your recent publication, . . . is another example of the valuable contribution you have made to maintaining integrity of the American federal system.
- 81 Pam Mock, et al
Pepin Area Schools
Pepin, WI (FAX: 715/442-3607)
- ADA / IDEA**—[Form letter]—I do not support watering down the fundamental rights of Americans. I support the full implementation of IDEA and ADA by national, state, and local government.

Ann W. Seigel
 Parent and Advocate
 27 Brainard Road
 West Hartford, CT 06117

IDEA—I have been following the process of reauthorization with much fear. We know we can't expect Congress to fund the IDEA at the 40% that was originally stated, but to allow states to be "relieved" of administrative and prescriptive mandates would be detrimental to the students and families now being protected. I agree that alternative dispute resolution should be in place, and we use the mediation process here in Connecticut successfully; but parent's rights will be curtailed if they are stopped from bringing a challenge in state or federal court after a hearing decision is made.

Gary Howard
 Transitional Living Specialist
 Living Independently in Northwest Kansas
 (LINK)
 202 Centennial Center
 Hays, KS 67601

ADA / IDEA—I implore you to change the recommendations . . . ADA and IDEA are our civil rights. IDEA must also stay intact as is. I concur that the government should stand behind the amount of repayment which they agreed to repay. But, to allow this law to be compromised will just increase the numbers of children with disabilities who miss out on the "equal" education . . . It would be beneficial to increase the federal funding for technical assistance and educational information to state and local governments. These entities need to know that they do not have to spend money on ADA compliance that they cannot afford.

Robert W. Cordtz
 International President
 Service Employees International Union
 (SEIU)
 1313 L Street NW
 Washington, DC 20005

FLSA / FMLA / OSHA / Davis-Bacon Related Acts / plus all other mandates—oppose the recommendations presented . . . deny state and local government workers protections would only serve to relegate them to second-class status. . . It is particularly ironic that these recommendations should come on the heels of recently implemented legislation that requires Congress to abide by many of the same laws and regulations as other employers. FLSA already makes special accommodations for public employers, such as granting compensatory time off in lieu of overtime pay and allowing special exceptions for firefighters, workers in health care institutions, and others who work irregular hours or shifts. SEIU has been urging the remaining 27 [that don't participate in OSHA] to operate the federal OSHA program as well. SIEU strongly disagrees with the Commission's assessment that FMLA is not sufficiently in "national interest." *CWA, IDEA, ADA*: sounds like "no money, no mandate." We agree with the Commission that the federal government should share some of the costs of mandates. The federal government must not back away from its commitment to workers and their families to provide a safe and healthful working and living environment. But the amount of a federal contribution should not be the defining consideration in whether states and localities should carry out a mandate. Absent federal protections, states and localities still remain responsible and liable for the consequences of unsafe work environments. *SDWA, CAA, ESA*: If these regulations are weakened, we could be threatening the health and well-being of our children and grandchildren. SEIU is also very concerned about efforts to curtail Davis-Bacon Related Acts. It is essential that these regulations remain on the books.

Pam Woodbeck
 404 West Main #310
 Mandan, ND 58554

IDEA / ADA / FMLA—Support recommendation to increase funding to 40%; Oppose recommendation concerning initiation of court challenges based on federal law by solely state and federal agencies—not the individual (This would take the right of complete due process out of the hands of the individual and put it in the hands of the government.) Support the recommendation that would create some modifications for some ADA requirements of state and local government agencies with[out] compromising commitment to people with disabilities nor their respective budgets. Support the creation of a single federal entity which would monitor enforcement of ADA requirements and legal action therein in state and local governments, but only if individuals may retain the right to bring legal actions when requirements are not met. Strongly oppose the recommendation concerning FMLA to repeal provisions that relate to state and local governments.

- 86 **Betty R. Busbea**
President
The ARC Jones County
P.O. Box 1233
Laurel, MS 39441
- ADA / IDEA**—we understand your report “singles out the ADA, IDEA, and twelve other laws as being “unfair” and “most troublesome” to state and local governments. Do not believe that state and local governments will provide these rights spontaneously, because “it is the right thing to do.” Remember, they are the ones complaining about these rights being burdensome and unreasonable. Laws like the ADA and IDEA are critical and the enforcement of these laws should be strengthened not weakened.
- 87 **Mr. and Mrs. Terry M. Busbea**
2263 Mill Creek Road
Laurel, MS 39440
- IDEA / ADA**—we have a [disabled] daughter . . . she received an individualized education, graduated with her class and fully participated in the graduation ceremony [because of IDEA]. Because of ADA she has her own small business. . . We have been active in The Arc and the Coalition for Citizens with Disabilities . . . our concern is reports we are getting out of Washington referring to laws like the ADA and IDEA as “expensive,” “burdensome.” and “unreasonable.” As taxpayers, we certainly want to see the budget balanced, programs held accountable, and our country prosper, but denying people with disabilities their inalienable rights is not the place to start. We . . . are depending on you to make a decision based on objectivity and information, not pressure from local and state governments that typically have not ever made an effort to allow people with disabilities to lead full and productive lives until the federal government passed legislation that mandated them to.
- 88 **Laurie Meech**
1814 Poki Street
Honolulu, HI 96822
- ADA / IDEA**—I believe [your recommendations] would ‘strongly damage’ the ADA and IDEA, if they became “local option” laws. It would never work here in Hawaii, so I disapprove of these “local option” laws.
- 89 **Susan Dotson**
10210 MacGill Ave.
Columbia, MD 21044
- ADA / IDEA / FMLA / Boren**—stop taking away from those that can least afford it. Weakening FMLA will weaken the family. As parents, we must have the right to sue the school systems if they are not following the law. Please reconsider your recommendations on IDEA, ADA, FMLA, and on the Boren Amendment.
- 90 **Harry Smith, Past President of National Rehabilitation Assoc.**
525 Seymour Apt. #208
Lansing, MI 48915
- ADA**—Most of the recommendations are irresponsible and unfounded. You choose to raise a threshold test of “cost to government” as a justification for delay, non-compliance, or coverage reductions. No other civil rights bill in the modern era has had such a litmus test applied. The only commendable recommendation in the preliminary proposal relates to centralizing enforcement and administration.

91 Nancy Verderber, Chairperson
MO Planning Council for Developmental
Disabilities
PO Box 687, 1706 E. Elm Street
Jefferson City, MO 65102

ADA / IDEA—Opposes all proposed changes. Would have long-term deleterious effects. Council does support increasing federal funding levels. Many are dragged into the “litigious” process *only* because the state failed to provide that education. Parents must retain full protection of judicial process in order to protect child’s rights. While pursuing alternative dispute resolutions practices is a good rec., squelching an individual’s right to private action is not. Current ADA provisions are sensible and flexible.

92 Widget Richards
2634 Chimney Springs Dr.
Marietta, GA 30062

IDEA—Maybe if the federal government gave their 40% like they promised 20 years ago, we would not have the problems we have today. It is very important that parents don’t lose their due process right in IDEA. We didn’t realize the value of due process until we experienced the failure of the local, state, and federal DOE investigation process; if we leave it up to local, state, or federal government to make sure that children with disabilities receive an education, then they will have NO education. Due process is a tool that parents can use to help their children. Hold firm the due process protection.

93 Raymond W. Preston, President
Paralyzed Veterans of America-Virginia
Mid-Atlantic Chapter
11620 Busy Street
Richmond, VA 23236

ADA—ACIR has no authority to review the ADA since the Act applies only to unfunded mandates. It is unfair to strip people with disabilities of the right to enforce their own civil rights. The principle of individuals acting as “private attorneys general” to enforce their rights is firmly planted in the law, and is as applicable to people with disabilities as any other American citizen. ACIR apparently believes that vesting all authority to enforce Title II on DOJ will result in more efficient enforcement; it makes no sense to enlarge the duties of an already overwhelmed federal agency. In addition, most state/local government programs have been required to provide access under Sect. 504 since 1973.

94 Noel Massey, MOM
2022 Grant Road
Grenada, MS 38901

IDEA—Special ed directors measure success by staying within constricted budgets. Teachers will come and go, as will special ed directors and administrators, that is why the statutory right of parents to bring court action should stay in IDEA. Founding lawmakers of IDEA asked “but what if the state and local system chose not to meet the educational need of a student with a disability? That’s why the decisions of the agencies must be challenged. Only an agency not following the provisions of IDEA will lose a due process hearing. It is only right that such an agency, forcing a parent into due process proceedings, should bear the costs. This is an incentive for districts to take that second look at the educational needs of that student, and to accept the educational partnership that parents are seeking. It has been more than 20 years since passage of IDEA, and still state and local school districts do not accept their responsibility to provide educational opportunity for students with disabilities. Federal government must increase funding for IDEA. However, requirements should not be relaxed even if federal funding is not forthcoming. State and local agencies have had more than 20 years to find funding mechanisms to provide educational opportunity for students with disabilities. If there are provisions in IDEA that prohibit local agencies from combining funds with other funding streams, those are provisions that need to be changed. There must be some check and balance in place to prevent state and local school districts from channeling funds away from students with disabilities.

95 Edward P. Bollenbach
23 Cook Street
Winsted, CT 06098

ADA—Currently there are less than 20 trial attorneys at DOJ who are charged with enforcement of all Title II and III of ADA. Even if we multiplied that number by ten, which won’t occur, it is impossible for a governmental agency to uphold the rights of millions of Americans in their day to day activities. If you recommend prescriptions on the rights of individuals to sue, or to threaten to sue for the purposes of settling disputes by alternative means, then Americans with disabilities will have no rights. Please consider the ADA as the Civil Rights law that it is rather than an unfunded mandate.

- 96 JoAnne Evans, Chair
Children and Adults with Attention Deficit Disorders
Government Relations Committee
499 Northwest 70th Ave., Suite 101
Plantation, FL 33317
- IDEA/ADA**—Deferring implementation decisions to the state and local governments would create even more difficulties for children with disabilities. Although many localities and states run excellent programs, just as many do not. Plans for educating children with disabilities are not made or followed, teachers do not receive adequate training, and children are not educated in compliance. Although federal oversight does not create the perfect system, it establishes a uniform system of monitoring and funding special ed plans in the states. Eliminating statutory right of individuals to bring court actions would undermine the due process protections that have helped families. Without this right, compliance will surely diminish as overburdened state and federal agencies will not be able to address the concerns of all parents. Allowing citizens such limited recourse in ADA for enduring discrimination would undercut the strength of landmark civil rights law.
- 97 Gustave R. "Gus" Sorenson
Chapter President, Wisconsin Paralyzed Veterans of America
2401 N. Mayfair Road
Suite 112
Milwaukee, WI 53226
- ADA**—ADA is simply not an unfunded mandate, but a civil rights law. Individuals with disabilities have the basic right to seek legal recourse when their civil rights have been violated; the legal system can then fudge the merits of each case. DOJ already has an overwhelming workload and it makes no sense to add to this burden unnecessarily. Sect 504 and ADA have been in effect for several years; this is more than enough time for compliance. "Undue financial burden" will ensure good faith efforts are made by all parties. All levels of government must have a high degree of public accountability. Deadlines and timetables were developed to ensure adequate time to comply.
- 98 Keith Breswick, M.S.
Certified Employee Assistance Professional
107 E. Main Street, Suite 5
Medford, OR 97501
- Drug & Alcohol**—Pooling resources through a consortia is a cost effective and feasible alternative to each individual agency having to develop their own programs. This is one way to approach solving the problems identified by state and local government in complying with the DOT regulations, and should be given consideration before exempting them from these important safety regulations.
- 99 Ron Armundson
441 Haili Street
Hilo, HI 96720
- ADA/IDEA**—Proposal to declare ADA and IDEA "local options laws" would make the civil rights of people with disabilities depend on where they lived, just as the old "slave state/free state" laws did. Please do not recommend such a discriminatory, destructive, and foolish policy.

100 Lunsford Dole Phillips
1620 Pioneer Plaza
900 Fort Street Mall
Honolulu, HI 96813

ADA—Your proposal to make ADA “local option” suspending it until fiscal capacities allow compliance is a huge step in the wrong direction. Government, on all levels, must set example for the private sector. Your proposal will be a disaster and a disgrace. The private sector will point a finger at government and rightly call government hypocrites. Drop the whole idea or at least have the courage to suggest the ADA should be optional for the private sector as well as the public sector.

COMMENT TOPIC

NAME & ADDRESS

- 101** Cheryl and Richard Radomski
107 Cross Street
Yorkville, NY 13495
- 102** Adolph Wildgrube
Rural Route #4, Box 298
Independence, KS 67301
- 103** John Ager
155 S 6th Ave
Gilman, WI 54433-9759
- 104** James A. Riley, ACBSW, LSW
Sponsoring Advisor
Red River Valley Self
Advocacy Group
State Development Center
Sunset, Room 327 (P&A)
Grafton, ND 58237
- ADA / IDEA**—Strongly oppose recommendations . . . any cuts to these laws would not only be devastating; but, would deny millions of individuals their civil rights.
- Metric**—[A package of material strongly opposing conversion to metric measurement.] [Note: A letter from ACIR Commissioner [Kansas State Senator] Paul Bud Burke is included in the package.]—The letter from Senator Burke to Mr. Wildgrube says: “I join Senator Bob Dole and Nancy Kassebaum in congratulating [sic] you on your success and persistence in keeping standard measurements in state highway signs and documents.”
- ADA / IDEA**—[Form Letter]—Do not support watering down . . . support full implementation of IDEA and ADA by national, state, and local government.
- ADA / IDEA / Boren**—agree with recommendation to increase funding for IDEA to 40%; do not agree with relieving the states from what are described as prescriptive and costly administrative mandates. Disagree with recommendation that students or their parents be denied the right to challenge denial of education to their child in federal court. Agree that federal funding needs to be furnished to assist as needed with ADA implementation. However, do not agree that any modifications of deadlines or requirements are needed. The designation of a single federal ADA enforcement and assistance agency sounds good at first mention. However, when we consider how singularly unsuccessful the single federal education enforcement and assistance agency has been in failing to achieve “equal protection under the law to students with disabilities,” we wonder if one agency will not be co-opted in the same way by those who will resist providing equal access and services because of their lack of concern for other citizens and their desire to protect their own self-interest. We do not agree with recommendation that Boren Amendment be repealed. If the mandates in Medicaid are removed, it will be an invitation for the State of North Dakota and many other states to return to the less expensive but horribly dehumanizing institutionalization model of care for people with disabilities.

105 Stacie Metelmann
Box 545, 10150 Highway 32
Walhalla, ND 58282

IDEA—It is my dream, some day, that the moral system of the USA could grow enough not to require all of these laws, . . . in the meantime, IDEA is a necessity. **Funding of IDEA:** Obviously, the federal budget is not balanced, however, cutting human issues is not the solution. Many other non-human cuts could be made. **Alternative dispute resolution:** Mandating who can and cannot seek legal council is not what I would consider a democratic society. I do, however, endorse the concept of informal mediation as a stepping stone to resolution, with formal litigation as a last resort.

106 Nanci Paiva
President
Disability Rights Hawaii
P. O. Box 5575
Hilo, HI 96720

ADA / IDEA—It has been reported that . . . IDEA and ADA “be demoted to ‘local option’ laws rather than Federal Civil Rights statutes.” At a 2/20/96 meeting, about 20 people discussed this and passed a resolution to express our unanimous opposition to this proposal. Our civil rights are not “local options” to be given and taken away at the whim of local governments. We strongly and unanimously urge you not to make this divisive and destructive recommendation.

107 Maggie Holt
Instructor
Northcentral Technical College
1000 W Campus Drive
Wausau, WI 54401

IDEA / ADA—[Form letter]—Do not support watering down IDEA/ADA. Signed by The Program for Students who are Deaf and Hard of Hearing.

108

Susan Golden
Chairman
Barrier Free Toledo
5605 Monroe Street
Sylvania, OH 43560

ADA—[Three identical letters addressed to different Commissioners or to ACIR staff.]—We do agree that there be provided to state and local governments increased technical assistance and educational information. We are finding many cities are relying on the disability community for answers to technical questions. While many persons know quite a lot about the ADA and the technical requirements that should not be what our cities rely on. We do not agree that a single federal ADA enforcement agency is for the best unless the Federal government increases its staff considerably. Most complaints submitted are assigned a case number and rarely investigated. By allowing private attorneys to file a suit not only speeds up the process by also takes the burden off the Department of Justice. We do agree state and local governments should have flexibility in the use of federal grants to comply with the ADA. However, we do not agree they be allowed to voluntarily comply. Please do not vote to modify or change the requirements of the ADA to allow voluntary compliance. This will set back disability rights for years.

109

Nancy J. Latini, Ph.D.
Director, Student Support Services
North Clackamas School District 12
Student Support Services
1903 SE Oak Grove Blvd.
Milwaukie, OR 97267-2621

IDEA / ADA—the ACIR Report captures the success of IDEA as well as the subsequent burdens, . . . I am a strong supporter of the “concepts” of IDEA; but, not the litigious and adversarial stance IDEA has allowed parents or the additional mandates added with no apparent interest in increasing federal funding. IDEA has become an overly prescriptive law. Strongly support option for more funding and option to defer decisions to state and local governments (programmable decision-making). *Option 4:* [Eliminate the statutory right of individuals to bring court actions] cannot be stated strongly enough. The dispute resolution process has forced local districts to fund lawyers via attorney fees rather than fund instructional support for needy students. . . . disputes should be brought to state or federal agencies where systematic problems may be discovered rather than whether a teacher correctly dated a form. I agree with the ACIR analysis of ADA, but question reality of federal funding. This again was a “feel good” act of Congress which led people with disabilities to actually believe that a lawsuit would fix the problem.

110

Saralynn Allaire, Sc. D., R.N.
Assistant Research Professor of Medicine
Boston University School of Medicine
The Arthritis Center
80 E Concord Street, A203
Boston, MA 02118-2394

ADA/IDEA/FMLA—Recommendations made by ACIR so seriously undermine potential effectiveness of ADA that it would be rendered totally useless. This is not just ‘do-gooder’ legislation that will enhance the lives of persons with health impairments, but legislation that will ultimately reduce costs to society levied by the need to provide support and care. Examples of communities and other organizations being adversely affected derive from cases where such organizations have failed to spend a lower amount of money when it was available, misinterpretations of the law, or decision to pursue a more costly accommodation. Proposed changes for IDEA and FMLA also undermine protections. (I have supported President Clinton until now, but as a person with disability, I am so offended by these proposals that if they pass, I will no longer be able to support him.)

111

Tom Cashen, Commissioner
Alaska Dept. of Labor
Office of the Commissioner
P.O. Box 21149
Juneau, AK 99802-1149

FLSA/OSHA/Davis-Bacon—Oppose any recommendation that the provisions covering state and local employees be repealed. Existing exemptions in FLSA for administrative, managerial, and professional employees are adequate to address the concerns raised by those calling for removal of this basic protection from all employees of state and local government. Existence of FLSA protections in private sector has done little to prevent the gaping inequality in incomes which is only now coming to the attention of the media. Recs. 2 and 4 might be pursued to alleviate some of the concerns addressed, but given the likelihood of cuts in the USDOL budget, option 3 would be likely to make it very difficult for employees to pursue a claim for violations. Surprised to see Commission refer to the requirement that state plans extend OSHA protection to public employees an “unfunded mandate” when USDOL provides 50% of the funding for state plans. We do not find it unreasonable that federal funds granted to states or local government carry with them the requirement that workers on those projects be paid the prevailing wage for their community. A revision of the threshold for projects, may be appropriate after 60 years.

112 Joyce B. Klein
441 E Erie Street, #4612
Chicago, IL 60511

ADA/IDEA—[Note: This is a letter forwarded from Richard Nathan. ACIR's recommendations for ADA and IDEA are quoted in their entirety. Then, the letter says the following which is a modified version of Letter #57.]—The time for action is now! We can't allow these devastating recommendations to go unanswered. This is just another attack in a coordinated plan to gut the civil rights of people with disabilities based on how costly we are. First our health care, now our civil rights. Therefore: I, Joyce B. Klein, member of the Mayor's Office for People with Disabilities Executive Advisory Council, (MOPD), the Gray Panthers of Chicago, and the National Gray Panthers, National Council of Jewish Women, Chicago and National Chapters, and a disabled Senior Citizen do not support watering down the fundamental rights of Americans. I support the full implementation of the IDEA and the ADA by national, state, and local governments.

113 Sharon Huffman
Legislative Liaison
Kansas Commission on Disability Concerns
1430 SW Topeka Boulevard
Topeka, KS 66612-1877

ADA—ADA provides states and local government the discretion in determining program access and what is an appropriate cost associated with compliance. The rights protected by the ADA are both morally imperative and economically beneficial. ADA is not unfunded; federal government provides substantial education and assistance services, and funds 80% of transportation costs, including construction and operation. Community block grants may also be used to satisfy requirements. Disability community recognizes budget constraints, but modification are an unnecessary compromise of our rights. ADA allows government to make good faith compliance efforts. A single federal enforcement and assistance agency would create rather than alleviate confusion and would hamper compliance and enforcement efforts. Technical assistance is widely available from a variety of government and non-government sources, suggesting that noncompliance is due more to inadequate effort than to inadequate information. Simplicity is an admirable goal, but must not be attained by sacrificing the expertise provided by multi-departmental participation. Increased federal oversight of compliance efforts would be a more effective means of improving enforcement viability, educational dissemination, and tech assistance. Progressive compliance encouraged by increased federal oversight would prevent these governments from falling into a cycle of procrastination and purported poverty. ADA's private cause of action must be maintained because elimination would minimize ADA protections, and would entail inefficient, expensive, and intrusive federal supervision of state and local government.

Luis E. Kolb-Ortiz
Assistant Secretary
Commonwealth of Puerto Rico
Department of Labor and Human Resources,
Office of the Assistant Secretary for
Occupational Safety and Health
Prudencio Rivera Martinez Building
505 Munoz Rivera Ave
Hato Rey, PR 00918

OSHA—Strongly disagree that requirements of Sect 18(c)(6) constitute an unfunded mandate. Coverage of public sector employees was a requirement of the federal act for approval of State Plan Programs. To delete this provision after the states required to include coverage of their legislation poses real problem as to finding of the activity for the 25 programs. Also, unreasonable to assume that states with approved plans can approve less stringent standards for public employees as such an action would be inappropriate and against public policy.

115 James M. Hecker,
Trial Lawyers for Public Justice
Trial Lawyers for Public Justice, P.C.
Suite 800, 1717 Massachusetts Ave., NW
Washington, DC 20036

CWA/CAA/RCRA/Superfund/Common Issue 4—If Common Issue 4 were enacted into law, citizens would lose their ability to sue to stop state and local government from discharging illegal amounts of pollution under federal environmental laws. There is no valid reason for exempting government polluters from citizen enforcement. Federal, state and local government are some of the largest polluters in the nation. Government-generated pollution is just as harmful as privately-generated pollution. Environmental enforcement and compliance standards should apply equally to state and local government, private industry, and agencies of the federal government. It would be unfair and hypocritical to retreat from the principle and subject state and local government to a less stringent standard of environmental enforcement. Congress created citizen suits because it was “wary of the untrustworthiness or lack of will of federal environmental agencies and the inevitable lack of resources for those agencies to address all statutory violations.” The lack of enforcement resources is an increasing concern now that budgetary pressures are forcing cutbacks in federal programs. In situations in which the government is unwilling or unable to take appropriate enforcement action, citizen enforcement is essential to assure compliance and protect public health and the environment. Citizen suits have a proven record of addressing and correcting serious environmental violations. Citizens can sue when federal and state agencies are not fulfilling their duties. Congress designed citizen suit provisions so that suits can only be brought for violations of specific, objective requirements of environmental statutes and regulations. The breadth or lack of clarity in certain federal laws is not a valid reason to limit the scope of citizen enforcement. At most, it may be a reason to clarify environmental requirements. We urge ACIR to continue to allow individuals to sue state and local government which violate federal law. [Note: This letter was signed by James M. Hecker and included unsigned signature blocks for the following people: Nancy Marks, *Natural Resources Defense Council*; Pam Goddard, *Sierra Club*; Carolina Hartmann, *U.S. Public Interest Research Group*; Alan Jones, *Tennessee Environmental Council*; Steve Koteff, *Trustees for Alaska*; Charles C. Caldwell, *National Environmental Law Center*; Douglas Haines, *Georgia Center for Law in the Public Interest*; Greg Wingard, President, *Waste Action Project*; John E. Bonine, *Univ. of Oregon*.]

116 Mr. & Mrs. Leonard Andestad
5230 South Bell Street
Tacoma, WA 98408-7633

ADA/IDEA—[See letter #57]

Henry A. Beyer
 N. Neal Pike Institute
 on Law and Disability
 Boston University School of Law
 765 Commonwealth Ave.
 Boston, MA 02215

ADA/IDEA—ACIR misinterpreted significant provisions of disability law. IDEA’s remarkable success has been due in large part to the parents of children with disabilities who were forced to file lawsuits in order to have state and local school systems comply with IDEA mandates. Alternative Dispute Resolution is already a requirement; before filing suit under the IDEA, a parent must exhaust his or her administrative remedies. The very process of having a team of educators, parents, and others assemble to develop the students IEP is itself a type of ADR. Report is probably correct in arguing state and local governments are better situated than the federal government to determine what is an appropriate education for a given student. The NCD concluded that certain additional changes to IDEA, including important changes in financing, should be made in order to further inclusionary education. DOJ has issued a policy advising that curb ramps “are not required where there is no pedestrian walkway . . .” (Answering Mayor Rendell’s statement that ADA requires curb ramps even on “rural streets where there are no sidewalks.”) If Commission members based their findings on such misinformation, it is not wonder their conclusions are so grossly in error. Vague terminology are very terms that ensure that the ADA will not impose costs in excess of a municipality’s means. “Readily achievable” has no relevance to requirements placed on state and local government, it is not clear why it is even mentioned in the report. Also, the Attorney General cannot be expected to bring all of the lawsuits needed by people throughout this vast country. Such an expanded federal role would require a huge increase in the Attorney General’s legal staff, an increase hardly in keeping with the national goal of reducing the federal bureaucracy. Self-advocacy and family advocacy at the local level can never be adequately replaced by reliance upon a federal agency in far-away Washington. History has shown that, if relieved of federal pressure to make their communities accessible, a great many of communities would take little or no action to remove barriers. For 22 years public agencies are supposed to have been working toward this goal. Also, doesn’t it make sense to have the FCC, the ATBCB, and the EEOC continue to administer those parts of the ADA in which they have developed specialized knowledge? No amendments should be made at this time.

Sharon A. Wrigley
 204 Hattie
 Collinsville, Illinois 62234

ADA/IDEA/FMLA—We must keep these acts intact with no weakening amendments; we must authorize IDEA as it now stands.

- 119 Pam Scott
ADA—This is civil rights legislation; should be left alone except better funded; it is not costly to implement.
- 120 Honorine Gedatus
440 310th Street
Wilson, WS 54027
ADA—School district buses disabled children to another district. Should not lose momentum on ADA.
- 121 Bobby Parton, Director
State of Tennessee
Division of Motor Vehicle Management
2200 Charlotte Ave
Nashville, TN 37243-0552
Fleet purchase mandates [Energy Policy Act of 1992]—recommends that final report include a recommendation to eliminate the Energy Policy Act fleet mandates.
- 122 Edward P. Hutchinson
Government Relations Director
Paralyzed Veterans of America
Mountain States Chapter
1101 Syracuse Street
Denver, CO 80220
ADA—There has been a long standing principle of individuals acting as private Attorney Generals to enforce their rights. . . . vesting all of the authority to enforce title II in DOJ will [not?] result in more efficient enforcement. It makes no sense to us to create a larger workload for DOJ than they already have.
- 123 Deborah Keefe
50 High Street
Collinsville CT 06022
IDEA—I am outraged that ACIR recommends: (1) That either the IDEA be funded fully by the federal government or relieve states of IDEA's costly requirements. (2) That only state and federal agencies, NOT PARENTS, could challenge a due process decision in federal or state court. [Note: Although this is not a pre-printed form letter, similar or identical language appears in other letters. We have referenced this letter when such language appears.]

William W. Howard
President and CEO
National Wildlife Federation
1400 16th Street NW
Washington, DC 20036-2266

Environmental Mandates (ESA, CAA, CWA, SDWA)—The report seriously mischaracterizes all four of the environmental laws it addresses and its findings of unreasonable burdens on state and local governments are not supported by any data. Total federal grants to states exceed even the most inflated estimates of so-called unfunded mandates. The truth is that these laws give states significant flexibility. Many of these so-called mandates are in fact not mandates at all . . . but delegated programs that the states have the option not to take. The report recommends barring citizens from suing state and municipal governments to force compliance with these environmental laws [NOTE: *the ACIR report does not make this recommendation.*] The report recommends ill-considered measures that would drastically weaken the ESA, . . . for example, the report recommends that “state, local, and tribal governments . . . have a consent role before a species is listed.” Requiring such widespread consensus before any listing decision would greatly burden an already difficult process. Likewise, requiring listing decisions to be based on “peer reviewed” information would prevent the vast majority of listings—most listings are scientifically uncontroversial yet may be based in part on non-peer reviewed data. Although the report rightly calls for an expanded role for state, local, and tribal governments in implementing the ESA, this role should not be accompanied by weakened federal standards.

125 Justin Dart, Jr
907.6th Street, SW, Apt. # 516C
Washington, DC 20024

ADA / IDEA—The . . . report made several positive recommendations. It also included misleading and otherwise irresponsibly negative references to the ADA and IDEA. Related press coverage contained statements that were extremely damaging to the rights of 49 million Americans with disabilities. I respectfully demand that the final report be suitably corrected, and that the public media be informed of those corrections. ADA / IDEA should not be reviewed because they are civil rights laws exempt for Unfunded Mandates Reform Act. Communities have been required by Rehabilitation Act of 1973 to make facilities accessible. It is dishonest to imply that the requirements of the ADA are unreasonably abrupt. ADA specifically states that no community can be forced to make changes which would impose an undue economic hardship. The suggestion to limit citizen suits is an infringement of rights—a right with no citizen remedy is no right. A call for suspension is alarming. We will cooperate 100% to achieve harmonious implementation of the ADA and IDEA. But we will fight to the end of time any change in law, regulations, or enforcement that weakens our fundamental equality as set out in the ADA and IDEA. We support emphasis on education and training. We call on Congress to provide increased funding that will enable federal, state, and local agencies to fulfill their ADA and IDEA monitoring responsibilities efficiently.

126 Hansueli Ryser
Managing Director
Technology for Life Drager
National Draeger, Inc. Breathalyzer Division
185 Suttle Street, Suite 105
Durango, CO 81301-7911

Drug & Alcohol—Support DOT's conviction that the potential safety benefits and long term cost savings of alcohol testing to employees, employers, and the public outweigh the costs of testing. . . . the charge for a breath test ranges from \$15-\$45 per test. Approved breath testing devices have been placed all over the nation, including in small, rural areas and remote communities. . . . In addition, we believe it would be beneficial to randomly test emergency service drivers (law enforcement, fire fighters, ambulance drivers,) and to require standard procedures for drug/alcohol testing.

Denise Brady
Director of Government Affairs
The ARC of Texas
PO Box 5368
Austin, TX 78763

IDEA—We agree with ACIR’s statement that the goals, purposes, rights, and protections offered by IDEA justify its mandate requirements. However, we question the statement regarding modifying the funding formula. There are mixed reviews within special education regarding the benefits of moving to a federal funding systems based on a state’s school-aged population . . . Many parents fear that moving to a non-categorical system would result in students who need special education services not being identified . . . Removing funding provisions that encourage the segregation of students is an idea The ARC of Texas has long supported. We agree that Congress should meet its original promise to provide 40%, but disagree with the recommendation that IDEA requirements be relaxed if Congress fails to provide this support. We oppose deferring IDEA implementation decisions to state and local governments. We oppose eliminating the due process rights of parents, or requiring them to use alternative dispute resolution in lieu of lawsuits or requests for hearings. We would support requiring states to offer alternative resolution . . . but oppose requiring parents to accept it before they are allowed to file for a due process hearing or go to court.

127

Hillary B. Pease
52 High Farms Road
West Hartford, CT 06107

IDEA—[See letter #123]

128

Philip and Carol Pasternak
28 Chesterfield Road
Wetherfield, CT 06109

IDEA—[Modified form letter]—We are outraged and quite honestly very confused the ACIR recommends that either IDEA be funded fully . . . or relieve States of IDEA’s requirements and that only State and Federal agencies not us Parents could challenge a due process decision . . . We believe that we as parents know our son’s needs as does son’s special education teachers, and we should be able to challenge a due process decision not the State or federal agencies.

129

Pamela Gensler, O.D.
43 Yankee Hill Road
Ridgefield, CT 06877

IDEA—[See letter #123]

130

- 131 Pat Hudson, Legislative Analyst
Providence Center, Inc
877 Baltimore & Annapolis Boulevard, Suite
110
Severna Park, MD 21146
- 132 Becky Williams
138 Grenada Lane
Greenwood, MS
- 133 Louise McKown
102 Emory Lane
Oak Ridge, TN 37830
- 134 Rosie L. Sawyer
Jeff B. Sawyer
1303 Eastside Ave.
Olympia, WA 98506
- 135 David M. Mills
6836 21st Street
Seattle, WA 98115
- ADA/IDEA/Boren**—Changes in the law should take away rigid requirements and maintain the philosophy of accommodating people with disabilities.
- IDEA**—The local school system cannot take the full financial burden of educating these children. The main concern is seeing that these children receive a proper education and a medium could be reached, so that parents would not have to work so hard for so little. Should be more emphasis on having qualified teachers in the classroom to provide the education our handicapped children need. Parents should be able to voice their opinion on what is happening in the classroom.
- ADA/IDEA/FMLA/Boren**—If you take away the right to sue, it will cost system more and strip individual right to due process. Disagree with broad assumption that states can determine what is best for their kids. Need national standard. ACIR is wrong in assumption that if dates are lifted for compliance of ADA, that government will do the right thing in good faith. Agree that there should be more training for government, and that federal money should go toward this, but disagree that federal government should foot bill for doing all work in this country. **FMLA**: No one should be without health insurance ever. **Boren**: Federal government should have say in how its Medicaid dollars are to be spent.
- ADA/IDEA**—[Two separate letters with language identical to Letter #57]
- ADA/IDEA**—[Modified Form Letter #57] *Personal comment*: Do not change these laws.

- 136 Catherine Ketrick, Ph.D
6836 21st Street
Seattle, WA 98115
- ADA/IDEA—[Modified Form Letter #57] *Personal comment:* Leave them alone.
- 137 Susan Izak
P. O. Box 59921
Renton, WA 98058
- ADA/IDEA—[Language of Form Letter #57 in first paragraph] *Personal comment:* Your attempt . . . to put such provisions into a budgetary perspective will restrict the access of the disabled and doom the disabled into third-class citizens of the U.S.
- 138 Michael J. Izak, WSAD President
P.O. Box 59921
Renton, WA 98508
- ADA/IDEA—Support full implementation of these laws.
- 139 David H. Raizman
Executive Director
Western Law Center for Disability Rights
919 S Albany Street
Los Angeles, CA 90015
- ADA/IDEA—Given the large number of jurisdictions covered by Title II, the necessarily limited resources of the Attorney General, and mixed enforcement records of rotating Attorney General's, limiting right to sue under ADA is massive reduction that individual jurisdictions will ever be sued. Persons with disabilities, unlike other protected groups, would be prevented from bringing civil rights actions. Because state and local government have been obligated to provide equality of access and opportunity since 1973, there can be no legitimate excuse, 23 years later, that more time is needed. In IDEA's first 17 years, there have been only 1,121 cases, about 1.3 cases per 100,000 children served; some of these were brought by the school district. Federal appeals are fundamental part of due process rights. Elimination of federal right of action would destroy rights to free appropriate education because the state educational administration that would otherwise conclusively adjudicate these disputes has an inherent conflict in enforcing student rights. IDEA only requires that local educational agencies comply with procedural protections. There are ACIR preliminary proposals that would enhance the ability of state and local governments to comply with disability laws.

140 Linda Walker Gardels, Chairperson
Mary Gordon, Director
Governor's Planning Council on
Developmental Disabilities
301 Centennial Mall South
P.O. Box 95007
Lincoln, NE 68509-5007

ADA/IDEA/FMLA—Federal mandates guaranteeing basic rights were put into place because state and local government were not always providing them. Experience has shown that financial consideration can become the primary influence in the IEP development by a school district. Access to public facilities is essential for persons to participate in the political process.

141 Kelvin J. Robinson,
Legislative Director
Florida League of Cities
201 West Park Ave., PO Box 1757
Tallahassee, FL 32302-1757

General—Report is well organized and provides justification for the assessment's evaluative criteria. Unclear with regard to the federal mandate evaluation is consideration of existing states' mandates laws, and how those laws affect a state's ability to pass on or even share federal mandates with its "political subdivisions." Report's identification of "key questions" is unclear as to how these questions are further evaluated at the state and local levels. "Are the costs of implementing the mandate appropriately shared among government?"; How is it possible to make a determination without specifically evaluating the specific mandate requirements imposed at either the state or local levels? National Pollution Discharge Elimination System (NPDES) program requirements are structured on the premise that geographically all communities receive the same percentage of rain annually, and that regardless of the size of the local government it must undertake this expensive permit process, as well as incur an expensive capital facilities work program using existing local fiscal resources. This example is inconsistent with the four criteria (p.3). "Federal failure to recognize state and local governments public accountability" clearly acknowledges that the role of local government has been given less consideration, but does not take into consideration the uniqueness in the overall structure and creation of local government. Recommendations generally focus on funding, but do not go far enough into the area of requiring more flexibility. The need for flexibility is paramount when evaluating mandates. Would have preferred more focus on specificity of the mandates, and what the directive of the mandates mean for local government operations to provide protection and efficient services. Also, Florida does have a federally approved OSHA plan.

142 Edmond M. Diorio
51 Echo Lake Road
Watertown, CT 06795

IDEA—[Modified version of letter #123]

- 143** Martha Harden
PO Box 10265
Hilo, HI 96721
- 144** Tom Cagle
PO Box 6482
Lakeport, NH 03247
- 145** Gertrude Schafer Jeffers
28 Tremont Street
Brighton, MA 02135
- 146** Anne M. Elluvont
- 147** United Cerebral Palsy of Northeastern
Pennsylvania
425 Wyoming Avenue
Scranton, PA 18509
- 148** Jodi Kopala
Cary, NC
- 149** Deborah Leuehonius
1276 Water Avenue
St. Paul, MN 55116
- IDEA/ADA**—I can't believe you are recommending that the IDEA and ADA become local option laws. Please reconsider. [Additional comments concern personal situation.]
- FMLA/ADA/IDEA—FMLA:** If your pursuit is to have the chronically, physically, and mentally ill served only by a demoralized and hostile staff, why not use your prison convicts?
- IDEA:** Remove this negotiating tool (individual suits) and what you'll get is something less than mini-state schools in each school. I'll make a cup of coffee wager that you won't save money. Dismiss the kids and you'll make an enemy for life of the parents. *ADA:* Agree that much of cities, counties, and some state inaction has been encouraged by the segmentation of enforcement to the DOJ, EEOC, FCC and others.
- ADA/IDEA**—These recommendations fail to consider the reason these laws passed in the first place. This discrimination most often has been the result of insufficient funds to meet the needs of these citizens.
- ADA/IDEA**—[Identical to Form Letter #57]
- ADA/IDEA**—[54 identical letters of opposition to ACIR's recommendations submitted as one package]
- ADA/IDEA**—[IDEA Postcard]—ADA should be mandatory, not voluntary. IDEA is a good law as it currently exists.
- ADA/IDEA**—[Identical to Form Letter #57]

150 Frances F. Grossane
110 Cannon Ridge Drive
Watertown, CT 06795-7454

ADA—Now, it seems you (all Commissioners names are listed) are recommending changes to the ADA. Changes, that would make the ADA a local option law. I believe federal funding should be increased to state and local government to assist in compliance. Including funding for paratransit or local technical and budget constraints will abridge the national commitment to the rights of individuals with disabilities. A single federal ADA assistance agency should be designated to coordinate enforcement and technical assistance, thereby consolidating efforts and having funds go to state and local government for speedy compliance with the existing ADA mandates. [Note: Letter #143 also uses term “local option” laws.]

NAME & ADDRESS

151 Laura R. Royal
2996 Mt. Vernon Road
Vienna, GA 31092

COMMENT TOPIC

IDEA—I suggest that funding is the major problem. [Describes personal experience.] I do not want the federal protections offered my child and others with disabilities weakened. Please do not remove any rights of due process from the individual. I have never seen a government or local agency effectively police themselves. As a commission looking at intergovernmental relations . . . it would appear that your time would be better spent on making sure children with all kinds of disabilities attend school in the regular classroom with their peers with appropriate services and supports and make sure there is adequate teacher training and backup.

152 John M. Novinson
Village Manager / Co-Chair, ICMA
Environmental Mandates Task Force
Village of Northbrook
1225 Cedar Lane
Northbrook, IL 60062-4582

General / CAA—impressed by the thoughtful and evenhanded conclusions . . . regret report was limited to 14 mandates. ACIR accurately identifies common issues. I agree with conclusion on three categories into which you classified the 14 mandates. One key conclusion meriting prompt and unequivocal support is the need for true partnership . . . that partnership must be founded on an equitable sharing of costs and the responsibility to raise revenue. . . . some recommendations are uncomfortably vague (e.g. reference to no penalty for non-compliance with the *Clean Air Act* if good faith effort made, begs question of what is good faith?) Overall this is a fine, focused study. It should become the foundation for meaningful legislative change.

153 Elmer A. Keen
Chair, Water Committee
Citizens Coordinate for Century 3
PO Box 1028
San Diego, CA 92112

CWA—[Note: letter includes several attachments, including a July 8, 1993, Congressional hearing record, detailing a number of specific issues related to *Clean Water Act* provisions and proposed legislative changes.]—The letter speaks to “a particularly burdensome federal mandate imposed by the CWA on San Diego and other coastal cities. The burden was, in effect, imposed by EPA reluctance to approve waiver applications regarding ocean discharge of secondary treatment. . . . As a result of EPA slowness, many agencies exceeded the application deadline for the 75% federal assistance. . . . An additional burdensome mandate was imposed on San Diego by an amendment to the CWA (PL 103-431). The amendment has no positive benefit on ocean resources, but does impose a heavy mandate in the form of a costly water reclamation program.

154 Michael J. Knowlen
Personal Care Attendant
1106 Irving Ave North
Minneapolis, MN 55411

ADA / IDEA—[Form postcard] “I support ADA and IDEA intact as they are! I oppose watering down the fundamental rights of any group of Americans. I support the full implementation of the IDEA and ADA by national, state, and local government, including the rights of individuals to bring action under these statutes, and compulsory compliance under current timelines. Asking communities to comply voluntarily is asking the plantation owner to free the slaves.” *Personal Comment*: “The ADA and IDEA stopped segregation of people with disabilities from the rest of society. Don’t start it again.”

ADA / IDEA—[Form postcard] “I support ADA and IDEA intact as they are! I oppose watering down the fundamental rights of any group of Americans. I support the full implementation of the IDEA and ADA by national, state, and local government, including the rights of individuals to bring action under these statutes, and compulsory compliance under current timelines. Asking communities to comply voluntarily is asking the plantation owner to free the slaves.” Personal Comment: “The ADA and IDEA stopped segregation of people with disabilities from the rest of society. Don’t start it again.”

Staff Attorney
Protection and Advocacy Agency of Hawaii,
1580 Makaloa Street, Suite 1060
Honolulu, HI 96814-3280

ADA—(1) Providing technical assistance and educational information to state and local governments is certainly an important element of ADA implementation. Contrary to what is reflected by your recommendation, however, a great deal of such assistance and information already exists. [Letter provides good additional information on this point.] **(2)** Federal funding for retrofitting of, or additions to, existing facilities would also be beneficial . . . [but] One of the great myths about ADA accessibility is that it costs large amounts of money. [Letter provides several statements on this point.] Significant progress can be made without great infusion of money for services, programs, and activities. The primary exception to this rule is public transportation, under Title II B of ADA. Paratransit, in many locales, is greatly hampered by the lack of funds to expand capacity. . . . Perhaps a low-interest federal loan system which allows local authorities to amortize this capital outlay would be one solution. . . . **(3)** The consolidation of enforcement should not ignore the several distinctive focuses of the Act. . . . While the EEOC should continue to enforce Title I [employment], Title II should remain housed in DOJ, Civil Rights Division. The economies of single point enforcement do not seem to justify the loss of experience, expertise and fluency. **(4)** I have serious concerns about your suggestion of eliminating the established and objective standards for state and local compliance. Ad hoc enforcement based upon local desires, perceptions, and degrees of enlightenment can only fragment, and eventually derail altogether, the momentum which has so far developed toward equal rights for persons with disabilities. [Letter includes details on regulatory provisions allowing for flexibility.] **(5)** The recommendation to minimize lawsuits under Title II, by taking away the right of the people to have a court of law review allegedly illegal acts by public officials, is appalling. First, such a suggestion could only arise from a distrust of the judicial system Second, since the Attorney General's office cannot possibly investigate and pursue all legitimate violations of the ADA, the move is an invitation to public entities to violate the law with impunity. The obvious objective is to remove the only enforcement mechanism which exists in most situations. There are reasons that the disability laws were patterned after the civil rights acts. . . . Any entity which can demonstrate hardship can, under current rules, seek appropriate relief.

156 Suzanne J. Young

Staff Attorney
Protection and Advocacy Agency of Hawaii,
1580 Makaloa Street, Suite 1060
Honolulu, HI 96814-3280

IDEA/FMLA—Strongly disagree with the recommendation that IDEA be modified to eliminate the ability of individuals to challenge violations of the law by school districts . . . there have been well under 200 judicial cases each year, nationwide. . . . These phenomenally low numbers belie the assumption that special education cases are being over litigated. . . . Parents prevailed in 45.7% of judicial decisions, whereas school districts prevailed in 54.3% of all decisions. . . . These statistics are significant because it reflects a vindication of the rights of with disabilities which would not have occurred if the private right of action by parents were not available. . . . Moreover, the sad truth is that with federal and state budgetary problems, cutbacks, and downsizing, it is exceedingly unlikely that such entities can meet the obvious need for representation by children who are not receiving a free and appropriate education [FAPE]. The effect of removing the individual's right to seek a due process hearing would be to remove the only enforcement mechanism, the teeth, of the IDEA for the very individuals who are harmed. . . . We oppose the recommendation that alternative dispute resolution be required. Such a requirement will only serve to lengthen an already time consuming process to the detriment of the child in question whose education is being hindered by the existence of the dispute and consequential failure of receiving a FAPE. . . . The concept that deference should be given to state and local entities or school districts . . . fails to recognize that competing interests of the needs of regular education students and budgetary constraints often sway the decisions which should be primarily predicated upon individual's needs. . . . Appreciation for the benefits and justice, of the full inclusion into our public schools of children with disabilities, is not something which will naturally evolve at the same rate, if at all, in many locales. . . . Moreover, there is no question that federal courts currently give deference to state and local entities as a result of their expertise and role in educational matters. . . . Lastly, . . . we certainly support the ACIR' recommendation that federal funding be increased to the 40% authorized level. This, in and of itself, would probably decrease the numbers of denials for requested services. . . . *FMLA* . . . we strongly oppose this recommendation . . . this law should apply equally to employees of state and local governments.

157 Joe Okada
1709 S. 88th Street
Tacoma, WA 98444

ADA / IDEA—[See Form Letter #57]

- 158 **Bonnie J. Moran**
37 Titicus Mountain Road
New Fairfield, CT 06812
- IDEA**—[Modified Form Letter #123]—*Personal comment: Identifies herself as a parent of a child with disabilities and the Chairman of the Connecticut State Advisory Council on Special Education.*
- 159 **Susan L. Wall**
One Holly Place
Wilton, CT 06897
- IDEA**—[Modified form letter #123]—I am outraged that ACIR could recommend that only state and federal agencies, NOT PARENTS, would be able to challenge a due process decision in federal or state court. . . . I have a special needs child. . . . Please don't support changes that will make their lives any more difficult than it is already.
- 160 **Norma Velez**
Family Services Director
United Cerebral Palsy Associations of Utah
PO Box 71586
1831 East Fort Union Blvd. Suite 222
Salt Lake City, UT 84121
- IDEA / ADA**—[Modified Form Letter #123]—I am outraged with the recommendation which would extinguish essential due process protections in the ADA and IDEA. . . . I am a parent of an 8 year old daughter with cerebral palsy / quadriplegia. . . . Many families have been dragged into the litigious aspects of IDEA *only* because school districts and states failed to provide free, appropriate public education for their children. The original law, P.L. 94-142, was established because states failed to provide for the education of all children. It would be unconscionable to revert this country to an era of discrimination and segregation in our public schools.
- 161 **Ed Wiederstein**
President
Iowa Farm Bureau Federation
5400 University Ave
West Des Moines, IA
50266-5997
- GENERAL [employment mandates / CWA / ESA / SDWA / CAA / D-B Related]**—
Through the American Farm Bureau, we have adopted a policy position that calls for reducing the impact of unfunded mandates on state and local governments. We support the conclusions of the preliminary ACIR report and urge the adoption of its recommendations. We support . . . removing federal government intrusion on the rights of state and local government in the area of employment practices. We also agree . . . that certain federal laws should be relaxed if adequate funding is not provided. The federal government does have a policy interest in assuring clean water or providing access to public and private facilities for those with disabilities. However, the federal government has rarely provided the funding needed to accomplish these national objectives. We strongly concur that flexibility must be given and funding provided to meet these national goals. . . . we share the same goals as the ACIR with respect to providing greater flexibility at the local level to accomplish the national goals of the ESA, SDWA, CAA, and D-B Related Acts. You accurately identified the problems associated with federal mandates and have outlined some positive steps to correct them. [Note: Throughout the letter it is urged that mandate relief also be provided to the private sector.]

162 Mary McIntyre

[No address or phone]

IDEA—My daughter was ruled autistic. . . . My overall experience with the public school system is a parent's input is not welcomed or encouraged, children with learning disabilities are placed in a classroom so they can be a body count for the school system to receive the federal funds and any special requests made by a parent to enhance their child's learning capabilities are met with excuses like lack of funding, shortage of teachers, etc. . . . a parent is the best source guidance in formulating an individual education plan for their child's needs. The more rights taken away from parents reduces a parents role in supporting and participating in the public school system.

163 Karen J. Clayton
Secretary

Siouxland Chapter

National Federation of the Blind of Iowa

2400 Rebecca Street

Sioux City, IA 51103

ADA / IDEA—In general we agree with the [ADA] recommendations . . . A single enforcement agency would increase visibility and enhance information dissemination and technical assistance efforts. Adequate funding of this education component and assistance in compliance is vital. Flexibility in methods and schedules of compliance are essential to achieving goals in a cost effective manner. We support limiting actions against local and state governments to the U.S. Attorney General so long as individuals retain the right to bring suit for just cause against the private sector. With respect to IDEA, we concur with three of the four recommendations. Funding should be increased to 40% as was the intent . . . The funding structure should be modified to eliminate the incentive to overclassify and segregate students with disabilities. State and local education agencies should have flexibility in the administration of special education programs with the federal government retaining a monitoring role. Though we believe an alternative dispute resolution process could eliminate many lawsuits, individuals must retain access to the courts as a last resort.

164 Wayne N. Sunahara

Hawaii Department of Human Services

Vocational Rehabilitation and Services

for the Blind

West Section

50 S. Beretania Street, C211-B

Honolulu, HI 96813

ADA / IDEA—[See Letter #143]—Express disapproval of recommendation to make ADA / IDEA "local option laws" . . . Historically, . . . poor economic conditions adversely affect the treatment of individuals with disabilities, let's not let history repeat itself . . . it sounds as if you are trying to pull the foundation of the laws that were initially established to assist . . . Leaving the governing of the ADA / IDEA to state and local government is a mistake. With all of the bureaucracy and "red tape" in state and local government, the ADA / IDEA are surely to be lost, buried, and forgotten. Given that it will be an option, and individual states and local governments will more than likely choose not to "up-keep" these statutes.

General—ACIR is not mentioned in the letter which expresses support for the Commission of the Blind in Texas.

165 Louie Rollins
Route 3, Box 515
Troup TX 75789

ADA—[Blue postcard Comment #182] Personal message: Please do all you can to retain ADA as written. I use a wheelchair. ADA is a fair law enacted with bipartisan support.

166 Norma R. Nickals
10404 NE 168 Street
Bathell, WA 98011

ADA/IDEA—In your report, . . . I understand you have included IDEA/ADA . . . I am wondering why these are included since they address civil rights, i.e. equity in citizenship, and are not “optional” needs which “might” be mandated or funded. It also seems your report would weaken both laws as related to the disabled. If so, I would urge you to reconsider your present stance.

167 M. E. Patrick Lee
4423 Chapman
The Colony, TX 75056

168 Amy L. Glad
Executive Vice President
Building Industry Association of Southern
California, Inc.
1330 S. Valley Vista Drive
Diamond Bar, CA 91765

General / CWA / ESA / CAA / ADA / ISTEA—We are pleased to see ACIR undertake a review of federal mandates. . . . it is increasingly the case that land development and land use decisions are controlled—often unjustifiably—by federal bureaucrats under the guise of federal law. . . . The Tenth Amendment reserves those powers not expressly given to the federal government to the states. . . . The laws that are abused by federal bureaucrats and special interest groups to impede land development include the CWA, ESA, CAA, and the ADA. While there is merit in the reasons behind each of these laws, we have become increasingly frustrated at the application of these federal laws without regard to economic and other social consequences—much less, common sense. An additional law excluded from your review is ISTEA [which] . . . contains a number of new federal programs that impact local transportation infrastructure and regional government policies that are duplicative of and possibly contrary to local land use authority. . . . We strongly believe ISTEA should be amended to allow local determination to redesignate regional government boundaries. . . . Further, several million additional federal dollars have been provided to MPO's for a variety of nebulous transportation / land use connection planning activities—when certainly not enough money has been provided to build or maintain adequate highway infrastructure. We believe a review of this law should be included in your final report. . . . The "Recommended Action" concerning CWA (pg. A-19) state[s] that changes to the law are not necessary because EPA is attempting to improve communications. Unfortunately, nothing like pending legislative action works as well to spur regulators to act as they should. We take no solace in a temporary improvement in administrative behavior and suggest that amendments to the CWA are indeed necessary, especially related to NPDES permits for stormwater runoff. . . . At a minimum, the CWA should be amended to require that the development of an appropriate permanent non-numeric stormwater criteria (meeting risk and cost-benefit criteria) be used in lieu of the traditional water quality standards and effluent limits in the regulation of stormwater discharge. Language protective of local land use control and addressing unfunded mandates should also be made part of new legislation. Additionally, limitations on citizen activities to protect against unwarranted legal action, monitoring and regulation should be addressed.

169 Adrienne and Rick Barhydt
2421 SE Juniper Drive
Milwaukie, OR 97267

ADA / IDEA [Modified form letter]—The report incorrectly includes ADA / IDEA . . . They are civil rights laws. . . . The *Unfunded Mandates Reform Act* does not apply to civil rights statutes. . . . The draft report's recommendations to eliminate a private right of action and to reduce state and local government compliance obligations under these statutes would set back efforts to guarantee equal rights for citizens with disabilities.

170 T. T. McLeod
13823 9th Place South
Seattle, WA 98168

ADA—[Blue postcard Comment #182]—Being disabled I feel ADA needs to be further. A new Motel with no H/C beds that will allow a lift transfer—Not all can stand.

171 Larry Haynes
Commissioner
State of Tennessee
Department of General Services
9th Floor, Tennessee Tower
312 8th Avenue, North
Nashville, TN 37243-0530

Alternative Fuel Vehicles—[See Letter #121 on same issue]—The DOE implementation schedule for Alternative Fuel Vehicle Acquisitions causes the State of Tennessee great concern. The proposed schedule will not provide us with sufficient time to plan for the funding, purchase and management of these vehicles. It will also not provide us with enough time to identify and secure adequate fuel sources. We recognize and support the need to protect the environment and encourage any measure which may be taken to insure clean air environment for present and future generations. We also recognize the need to become less dependent of foreign oil imports. We feel, however, that the legislation amounts to an unfunded mandate and that the proposed implementation schedule places an undue financial burden on Tennessee in a time of tight budgets and a growing demand for state services.

172 Sharon D. Banks
General Manager
AC Transit Alameda-Contra Costa Transit
District
1600 Franklin Street
Oakland, CA 94612

ADA[Paratransit]—While [we] strongly support the letter and spirit of the ADA, we also strongly support ACIR's recommendation . . . that the President and Congress "either provide increased federal funding to state and local government to assist in compliance, including funding for paratransit, or modify some deadlines and requirements to let state and local governments meet ADA goals in a manner that recognizes state and local technical and budgets restraints without abridging the national commitment to the rights of individuals with disabilities." We appreciate your including a thorough discussion of the unfunded ADA complementary paratransit mandate in ACIR's final report. More importantly, we believe a separate discussion and Recommended Option concerning the complementary paratransit mandate should be included in the final report. . . . a general recommendation that the federal government needs to both provide a fair share of funding for this service and/or extend impending deadlines to implement the service would be acceptable.

173 Rich Daley
Advocacy Director
Paralyzed Veterans of America, Inc.
Gateway Chapter
9535 Lackland
St. Louis, MO 63114

ADA—ADA is not an unfunded mandate, but, a civil right that paralyzed veterans, and all Americans deserve. . . . Opposes the idea of coordinating all of the enforcement of this law into DOJ. The agencies involved in working with ADA have carefully defined their requirements within this law. Their educational programs, enforcement programs, and technical assistance for ADA have been effective because these agencies have the technical knowledge and legal expertise to best understand the governments role in eliminating discrimination. To delegate the entire enforcement to the DOJ would slow the enforcement process down to an ineffective procedure.

174 Sue Laroff
Access Specialist
University of Minnesota, Disability Services
12 Johnston Hall
101 Pleasant Street, SE
Minneapolis, MN 55455

ADA/IDEA—[See Letter #57]

Treasurer, Risk Management and Quality
Improvement

Center for the Advancement of Human
Development

15027 Hillisdale Avenue
Omaha, NE 68137-5318

Common Issues / IDEA / SDWA / CAA / ADA—State Sovereignty: . . . in fact, states are not “just another interest group” in today’s climate. State governments have enormous resources to lobby, sabotage, delay, or otherwise totally derail important national interests. There are no other interest groups with the kind of resources to available to them that states will continue to have long after this report is finalized. Further, if the recommendations are implemented, the currently decided advantage this interest group has will only tilt more unevenly and unfairly in their direction. States need no help here. *Private Litigation:* . . . your report ignores the far greater frequency with which mandates are clear and the significant foot-dragging that occurs in spite of the obvious need for implementation. . . . you should have recommended : (1) demand quicker state and local compliance with federal law when requested by citizens so as to avoid the costs of litigation; and (2) suggest clarifying language of allegedly ambiguous statutes, not act as an apologist for States whose officials merely seek to avoid their responsibilities under the mandate. *IDEA:* . . . Alternative dispute resolution practices should not be mandated, but should be encouraged where appropriate, by the court involved. . . . The costs associated with administration could be substantially reduced by educational agencies adopting aggressive compliance policies rather than by adopting obstinate postures of refusal. . . . Clearly, states can not be trusted with the amount of latitude advocated for in your report. There is little need for increased federal funding for IDEA. Of what benefit is it to take money from a state and run it through a federal bureaucracy, only to return it from whence it came? This is increased costs per se. *SDWA:* . . . We clearly should not allow states to resume control over drinking water standards. States had the chance to responsibly assume such responsibility, and they failed miserably. The better solution is to review the requirements, make recommendations, take public comment, and alter theregulations where need be. . . . EPA is massively behind due to underfunding . . . this kind of research [testing contaminants for health ramifications] is best carried out on an economy of federal scale, and should have enforcement to match. *CAA:* . . . We clearly should not allow states to assume control over clean air standards. States and local governments had the chance to responsibly assume such responsibility, and we received lethal air in exchange in many areas. The better solution is to review the requirements, make recommendations, take public comments, and alter the regulations where need be. *ADA:* . . . Requiring all ADA litigation to be brought by the U.S. Attorney General is asking for the Act to not be enforced. That office will never have the resources to enforce the ADA in the millions of affected areas. The Act’s authorization of private rights of action should not be tampered with, particularly when the vast majority of problems you identify relate to ambiguity in statute. Your recommendation should center on

175 Morgan P. Kelly, J.D./M.A.
(continued)

resolution of ambiguous language, not reduction of enforcement. Neither should there be a single ADA enforcement agency. Each agency is able to better respond to the needs of the disabled as they manifest in the particular agency's domain. No one existing agency has the expertise to accomplish the goal of responding to the idiosyncratic manifestations of disability that arise under all other agencies.

176 Debra Johnson
Executive Director
Idaho Parents Unlimited, Inc.
4696 Overland Road, #478
Boise, ID 83705

IDEA / ADA—[This is a letter Senator Kempthorne forwarded to ACIR]—Idaho families of children and adolescents with disabilities have been keenly aware of the federal underfunding of IDEA for the past 20 years. . . . a survey conducted by Washington State University . . . identified that 4 out of 5 citizens were in favor of the state providing more resources to assist teachers in providing for the educational needs of children with disabilities. The survey also concluded that 4 out of 5 residents believe that children with disabilities should go to neighborhood schools. . . . [We] support Congressional attempts to bring IDEA up to its fiscal obligation as promised in 1975 (40%). The issue . . . that concerns me the most is . . . "Eliminate the statutory right of individuals . . . "I strongly believe that this recommendation is in direct violation of the 14th Amendment of the U.S. Constitution. . . . In 1972 the federal courts examined the implications of the due process clause . . . *Pennsylvania Assoc. for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972) and *Mills v. Board of Education*, 348 F. Supp. 886 (D.D.C. 1972). In both cases the courts found that decisions excluding children with disabilities from regular classes raised constitutional issues which could be addressed by private actions in the courts. . . . If state or local governments make decisions which affect the rights of private citizens, the citizens must have resources to the courts to redress those rights. In any event, it could serve to force parents of children with disabilities back to litigation under Section 504 of the Rehabilitation Act of 1973, and section 1983 of the Civil Rights Act of 1968. Instead of decreasing the burdens of litigation, people will turn to statutes where litigation is available, potentially increasing court actions. Under the current law, the courts have not allowed action under section 504 or the ADA to go to court if they could be addressed by the IDEA's administrative procedures. If the right of court action is removed from IDEA, it will open these other avenues to the courts. The ADA is also fundamental Civil Rights legislation. . . . The idea that Americans have rights which they must depend on the government to enforce, stands the whole concept of liberty under the law on its head. When a state or local government interferes with a person's federally guaranteed rights to liberty, property, or equal protection of the laws, that person's right to redress in the courts is of constitutional origin and cannot be removed at the whim of Congress.

177 Charles Simmons
Compuserve: 71031,3146
Internet: simons@uhunix.uhcc.hawaii.edu

Misc—I think that its very dangerous to attempt any kind of wholesale rollback of federal regulations until this government has clearly established national goals and objectives, and has iterated some credible means of executing them. In the absence of clear goals, the only interests that will be served will be those of large corporations who seek to set up 3rd world conditions in the U.S.

178 John H. Woelflein
11 Hideaway Road
Nashua, NH 03060-1133
Internet: jwoelflein@ccmail.eo.ray.com

Metric—I believe to repeal the requirements that state and local governments convert to metric on a federal timetable as a condition of receiving federal aid would result in the loss of any progress our country has made in metric conversion. . . . All other countries who have converted to the metric system in the recent past established a 10-year program of converting every sector of their societies. . . . Our kids will also lose out if metric is slowed down or stopped again, . . . Remember, the USA is the ONLY industrialized country in the world that has not made metric the predominant measurement system.

179 Jim McCracken
Institute of Standards and Technology Metric
Program,
Building 820, Room 306
Gaithersburg, MD 20899

Metric—I encourage leaving the law alone. There are no “requirements” in the law making anyone use the metric system. Federal agencies are working with the states on metrification implementation. Over 80% of the states are willingly working toward metric implementation by the Federal Highway Administration’s publicly developed 1996 target date.

180 Henry Knoepfle
[Electronic response—no address included]

Metric—Without some timetable for the conversion to metric state and local governments will not do so. While it might cause some short term problems now, failure to convert to metric in a quick and efficient manner will cost more in the long run. My opinion is to keep the metric timetable in place.

181 Patrick McCormack
PO Box 57122
Jacksonville, FL 32241-7122
Internet: marypat@jax-inter.net

FLSA / FMLA / OSHA / Drug & Alcohol—As a Human Resource Professional . . . I take exception to several suggestions contained in the report . . . granted the report “does not take issue with the goals” but to state that there is “not sufficient national interest to justify intruding on state and local government” in regards to the FLSA, FMLA, OSHA, DOT [Drug and Alcohol] is paramount to blindness. Why should (FLSA) government employees not have the same protection as non-government employees. . . . I can safely state that public accountability is a laugh and the[re] appears to be some truth that union leaders are “in bed” with management. Similar arguments can be made for the FMLA. Why penalize the government employee? . . . Tighten up the loopholes, yes! Repeal, No!!! If elected officials want to win votes by saying they want to run government like a business then they must remember that after the election. All to often appointed employees and officials are too involved in the power they gain and total quality management (TQM) becomes a laughing matter to the regular employee. . . . The suggestion of allowing more flexibility is good, but if it permits deviation from a national standard, it is bad.

182 Russel Ross
[No return address—postmarked Seattle, WA
98144]

ADA—[Blue form postcard]—“Dear Committee Members, I strongly urge you to retain the ADA as it exists. Ensuring my basic civil rights does not create hardships for others. Because of the ADA, future generations can always be part of the community. [A space for comments is provided (none were written in on this card). Yours,”

183 Mike Allen
2121 26th Ave S. #512
Seattle, WA 98144

ADA—[Blue form postcard. See Letter #182]—*Personal Comment*: “Please leave ADA on!! We are strongly advised to keep ADA strong.

184 Lin S. Goodman
2121 26th Ave S. #704
Seattle, WA 98144-4761

ADA—[Blue form postcard. See Letter #182]—*Personal Comment*: “Most ‘accommodations’ need to be made, can be made for less than \$100.00. Anything requiring substantial amt. of money, is a tax write-off! Doing anything less would be discriminating. These are basic civil rights everyone in our position would feel the same.”

185 Albert S. Smith
2121 26th Ave S. #721
Seattle, WA 98144-4761

ADA—[Blue form postcard. See Letter #182]—*Personal Comment*: “I am a wheelchair bound VET with paraplegia and AIDS. Social Services to both Vets and Aids victims have already been drastically cut. DON'T CUT ADA MANDATORY COMPLIANCE.”

- 186 Anthony J. Schmidt
2121 26th Ave S. #515
Seattle, WA 98144-4759
ADA—[Blue form postcard. L #182]—*Personal Comment*: I live in a wheelchair, isn't that punishment enough? DON'T take away my rights. ADA was put together so people could have a life.
- 187 Judy Faulkner
2121 26th Ave S. #402
Seattle, WA 98144
ADA—[Blue form postcard. See Letter #182] [No personal comment.]
- 188 Tyrone ? Bratwaithie ?
[No return address.]
ADA—[Blue form postcard. See letter #182]—*Personal Comment*: We disabled people are people that contribute to society in many ways the ADA as it is helps us to do so. (Cut the BS) not what helps people live.
- 189 Tom Lebel
2121 26th Ave S. #212
Seattle, WA 98144-4756
ADA—[Blue form postcard. See letter #182]—*Personal Comment*: You dare not remand disabled persons back to Bedlam; but for the grace of God you might be. Remember "Marley's Ghost."
- 190 Patty Jones
2121 26th Ave S. #514
Seattle, WA 98144-4759
ADA—[Blue form postcard. See letter #182]—*Personal Comment*: Do not allow our laws to move backward. It has taken so long to get this far in benefiting the disabled.
- 191 Mark Smith
3111 Oak Forest
Jackson, MS 39212
ADA—[ADA Postcard]—For our employment, support the ADA. [See Comment #386 for letter in official capacity]

192 Dean A. Hyde, PE
703 N. Madison
Pierre, SD 57501

FLSA/OSHA/Drug & Alcohol/Metric/Crumb Rubber—With considerable emphasis now on quality, workmanship and the need to apply cost effectiveness to our transportation infrastructure, this provision should not be repealed because the provisions of the FLSA attract the type of workers able to perform quality workmanship and efficiency in design, construction, operation and maintenance of our transportation infrastructure, which is so vital to our national economic well-being. OSHA should not be repealed because it is in the best interest of the health and safety of all citizens nationally, not just the workers that design, construct, operate and maintain our transportation infrastructure. Drug and alcohol testing of commercial drivers should not be repealed because it helps keep inhibited commercial drivers, drivers of big heavy rigs from driving the same highways nationwide as smaller vehicles containing family members. Metric conversion provision needs to be repealed or coordinated with the metric conversion for the rest of the nation. A soft conversion should suffice in the transition period. Required use of recycled crumb rubber should be repealed because it should be an individual state's right to utilize this resource only if the material is cost effective and compatible with the other materials in the asphalt material mix and the environmental conditions in which it is placed. It may be more cost effective for an individual state to utilize the used tires it generates by consuming them as fuel in a power generating plant or by some other recycling means.

193 Rene Christensen Leininger, Director
Illinois Planning Council on Developmental
Disabilities
100 W. Randolph 10-600
Chicago, IL 60601

ADA/IDEA—IDEA should be exempted from review because it is voluntary and it provides constitutional and civil rights protections for students with disabilities. ADA should also be exempt. **IDEA**: Eliminating minimum requirements would allow states to take funding without accountability. IDEA was intended to assist states by funding a percentage of the excess costs of providing that education. and was put into place 20 years ago because states were not meeting their obligation. Instituting alternative dispute resolution procedures is unnecessarily burdensome and costly and would not be advantageous to schools, families, or children. Parents and schools can currently avail themselves of these alternatives prior to filing formal due process complaints under the system. **ADA**: Currently provides state and local government with wide discretion in determining both program access and cost to comply. The federal government provides substantial education and assistance, and funds 80% of transportation costs, including construction and operation. Community development block grants can also be used to satisfy ADA requirements. ADA recognizes and accounts for budget constraints by allowing government good faith efforts. Rather than eliminating expertise (of multiple agencies), increased oversight of compliance efforts would be a more effective means to enforce the ADA and provide education and technical assistance. Elimination (of private cause of action) would greatly reduce ADA's protections and result in inefficient, expensive, and intrusive federal supervision of state and local government. The protection of fundamental civil rights must not be vested to a single person, entity, or branch of government.

194 John Perry, Village Administrator
Village of Woodridge
Village Hall
1900 W. 75th Street
Woodridge, IL 60517-2699

General—Impressed with the work and analysis contained in the report. Makes a compelling argument to reconsider the many burdens that have been placed upon local government. It is imperative that we use the recommendations of the report to begin the process of reinventing the relationship between federal and local government. I would encourage you to move forward and re-examine the may additional unfunded mandates identified in the report.

195 Hilda Kapral
104 Beechwood Dr.
Southington, CT 06489

IDEA—[See Letter #123]—As a parent of a child with special needs, I am outraged by ACIR recommendations.

196 Laura Remson Mitchell,
Government Issues Coordinator
Natl. Multiple Sclerosis Society
19955 Blythe Street
Winnotka, CA 91306-6462

ADA—ADA already includes significant flexibility and provisions for accommodating financial hardship. In many cases, these provisions work well, but some jurisdictions seem to have interpreted them as a justification for relegating ADA compliance to back burner status. Adoption of these recommendations would set a bad example that private sector entities may try to cite in efforts to avoid their ADA obligation as well. (Permitting only federal government to sue) is incompatible with other civil rights laws, which generally give individuals the right to sue. A “federal enforcement only” policy would almost certainly translate into reduced enforcement, particularly in view of current efforts to reduce the federal budget. We encourage state and local government to work actively with the disability community in a spirit of full cooperation to meet their ADA obligations.

197 Geraldine O’Brien, ECMHSP Executive
Director
East Coast Migrant Head Start Project
4200 Wilson Blvd. #740
Arlington, VA 22203

Davis-Bacon—Implementation of Davis-Bacon Act is a great hardship to the delivery of services to children and families. Increases cost and time when time is an important factor with mobile families. In the local communities it may be that cost can be lowered by workers volunteering or simply reducing costs because of the children and families. when federal funds are severely limited, it is not reasonable to increase costs by the Davis-Bacon Act. If the federal government awards a grant to a reliable non-profit agency, that agency should be allowed to manage costs in the most appropriate cost effective manner possible. I recommend that all Head Start programs by exempt form meeting the requirements of the Davis-Bacon Act.

198 Donald M. Meisner, Chairperson
IA ACIR, IA Legislative Council
State Capitol Bldg.
Des Moines, IA 50319

General—Commends ACIR on its study methodology and fully agrees with the stated basis of the recommendations as printed on pages 3 and 4 of the report. We agree with recommendations on FLSA, FMLA, Drug and Alcohol Testing, Metric Conversion, Boren Amendment, SDWA, ESA, CAA, Davis-Bacon, and IDEA. We recommend amending OSHA to give participating state government as much flexibility in regard to public employees as is authorized for federal agencies. Also recommend that the funding of the OSHA program and that the impact of OSHA regulations on the private sector be reviewed. We recommend Option 3 for the CWA to relax strict requirements and allow state and local government discretion in developing standards, control methods, and timetables for state and local government. We recommend for ADA Option 2 to provide flexibility to state and local government and federal flexibility in the use of federal grants to comply.

199 Sally J. Smathers, Madison County Solid
Waste Coordinator
210 S. Robbins Court
Richmond, KY 40475

Crumb Rubber/Drug & Alcohol /CWA/CAA/ESA/SDWA—Requirement to use a percentage of crumb rubber in roadways should not have been repealed. ACIR should recommend its reinstatement. Opposition to crumb rubber use comes from people protecting business interests in rock. Drug and Alcohol Testing is needed to decrease the cost of repairing damages from road dept. employees and to decrease amount of money paid annually toward medical and insurance costs. What we need is some way to control inflated costs for testing and random selection. *CWA*: KY has a tradition and policy of “no more stringent than” enforcement and regulation developed at the federal level. Permits are given easily, pre-treatment plans are seldom monitored or enforced and the only chance to preserve the poor water quality we now have is to keep high standards to be able to aim for. *CAA*: Air standards are not strict enough. Permits are individually considered and granted and accumulated emissions are not considered locally. *ESA*: Act has contributed understanding of the interdependence of plants and animals. It should not be repealed, it should be a point around which sustainable development issues are compromised. *SDWA*: Drinking water standards should not be weakened.

200 Citizens for Sensible Safeguards
1742 Connecticut Ave.
Washington, DC 20009

General—[See *Shirking Responsibility: ACIR's Call to Repeal Federal Protections*, an analysis of ACIR's preliminary report.]

#	NAME & ADDRESS	COMMENT TOPIC
201	Steve Rhodside [e-mail message] srhodside	IDEA / ADA —I have a problem with the recommendation for both IDEA and ADA in that they take away the right for individuals to sue state and local governments. I have no problem with supplying individuals with alternative dispute resolution mechanisms such as mandatory arbitration, but I have a problem when the only way that a state or local government can be forced to enforce the law is if the Federal government chooses to institute legal actions against them.
202	Nancy E. Epstein, M.P.H. Director The Disability Policy Consortium 7800 Shoal Creek Blvd. Suite 171 E Austin, TX 78757	ADA / IDEA —We strongly oppose all of the recommendations related to ADA. We also recommend significant modifications to your recommendations related to IDEA. ADA: #1(a) Provide increased technical assistance and educational information—this ignores the presence of Sec 504 of the <i>Rehabilitation Act of 1973</i> which has required these same changes for 20 years and ignores the numerous public and private informational resources already available. #1(b) Provide a fair share of funding for retrofitting existing facilities—state and local governments are not required to “take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burden. [28 CFR Sec. 35.150(3)] Undue burden is defined as “significant difficulty or expense.” [28 CFR Sec. 36.104]. . . . if state and local governments had phased in Sec. 504 . . . compliance with ADA would not be a major task. #1(c) Designating a single federal agency—The eight departments designated to enforce the ADA were chosen because of each departments expertise in specific areas (e.g. DOT does transportation issues). Transferring this to DOJ is ridiculous. #2 Provide flexibility—state and local governments are required to operate services, programs, and activities, so that when “viewed in its entirety” [services, programs, and activities] are “readily accessible to and usable by individuals with disabilities.” [28 CFR Sec. 35.150] #3 Require all legal actions be brought by Attorney General—It is not possible nor feasible for the Attorney General’s office to handle the number of complaints that would go to that office. IDEA: #1 Modify the funding provisions—There are mixed opinions within the special educationcommunity on moving to a federal funding system based on state’s school aged population rather than on the number of students identified for special education. . . . Those who

support the current funding system are fearful that the removal of the financial incentive to identify and "label" students would dilute current "child-find" initiatives. #2 . . . relax . . . costly requirements—we certainly concur that Congress should meet its original commitment to provide 40% funding. We do not support the idea that requirements should be relinquished nor relaxed if funding from Congress is not fully supportive of implementation. We are greatly concerned that states, including Texas, would choose to reduce many of the more costly services needed by students with more significant disabilities. #3 Defer implementation decisions to state and local governments—This is a most alarming proposal. IDEA exists because state and local governments were not providing an appropriate education to large numbers of students with disabilities. . . . Persons with disabilities (including children) are a minority in this country and as such need the protection of federal oversight and regulation. #4 Eliminate the statutory right of individuals to bring court actions—We support Congressional proposals to offer mediation to families, but we do not want it to be REQUIRED. Alternative dispute resolution has the capacity to reduce the number of due process hearings, . . . There are some situations where both sides know mediation will not work.

ADA—I understand you are considering "abolishing some ADA causes of action for damages or otherwise making modifications to ADA." Based on my experience with this type of litigation, I give my wholehearted support to such efforts. ADA is so vaguely defined and is so general in nature that virtually any employee who has suffered an illness can bring a claim under the act for damages. The loose terminology of the act literally invites litigation against employers from malingers. [The letter includes several examples of employer / employee lawsuits.] Another problem that I have with ADA is the so-called "defenses." In truth, there are virtually no realistic defenses available. [The letter discusses the use of "undue hardship" as a defense in employer cases.] No one is opposed to some of the concepts of ADA. The accessibility standards in public places are certainly beneficial to society . . . [The letter includes considerable discussion from an employers point of view.] If any one change could be made to this legislation, I would suggest that we eliminate the damages provision altogether (expecting, of course, front and back pay). The second most needed aspect of the legislation is to abolish the right of public employees to sue state and local governments for damages under the Act. I believe this is the particular recommendation that you have before you. Short of these changes, this legislation is in need of being entirely redrafted. Such redrafting should not be left to the court system to bring it about in a piece meal fashion.

- 204 Marie B. Latta, M.Ed.
Latta Enterprises
[No address]
Phone: (AC?) 399-0858
- 205 Dick Godwin
Internet message: <goodwin@ezl.com>
- 206 Michael B. Mock
2100 Bloomington Ave
Apt # 313
Minneapolis, MN 55404
- 207 Eric S. Peterson
4440 Beard Ave. S., #318
Minneapolis, MN 55410-1465
- 208 Mary L. Marsh
4121 Terrace Drive
Amarillo, TX 79109-5526
- 209 Deantha Schwehr
14419 26th Ave. S.
Seatac, WA 98168-4209
- ADA**—I am appalled that there is an attempt to dismantle Title II of ADA. . . . The money spent often comes from lack of research into how to do it order to comply. . . . As a parallel, health rules require us not to sell spoiled milk. It doesn't require that the government pay for refrigeration. It simply requires that businesses follow the working rules. Keep Title II.
- ADA / IDEA**—I find your summary and recommendations regarding ADA and IDEA short-sighted. America must decide if it will exclude Americans with disabilities at extremely high costs to the taxpayers, or create opportunities for citizens with disabilities through civil rights laws. ADA and IDEA attempt to move away from paternalistic “help the handicapped” to meaningful opportunities for people. Taking care of people has always been more expensive than granting opportunities. Don't return us to institutions and dependency.
- IDEA / ADA**—[Two copies of form Letter #57] No personal comments. [One letter was addressed to ACIR and one was addressed to Gov. Arne H. Carlson]
- IDEA / ADA**—[Form letter #57] No personal comments.
- IDEA / ADA**—[Form letter #57] No personal comments.
- IDEA / ADA**—[Modified form letter #57] No personal comments.

IDEA / ADA—[Modified form letter #57] No personal comments.

210 Michael Russo, Jr.
John Russo
Bertina R. Marin
312 W. Chestnut St.
Centralia, WA 98531-2537

211 Anita Cappalla
25 Cheshire Drive
South Windsor, CT 06074

IDEA—[Modified form letter #123] *Personal Comment*: I feel this latter piece [limitations on filing suits] is very discriminatory and reduces the importance of parents input into the special education needs of their children.

212 R. Goodale
33 Timber Hill Road
Cromwell, CT 06416

IDEA—[Handwritten Form Letter #123] No personal comments.

213 Dan Rempeti
[No address]

ADA—[Blue postcard Form Letter #182] *Personal Comment*: Please don't take any of my civil rights as a disabled American away. Leave ADA the way it is.

214 Susan Crowley
[Telephone Message]
Austin, TX [No further address given.]

ADA / IDEA—Urge support for programs. Funding should not be cut. These programs are civil rights laws for persons with disabilities. Money should not be cut.

215 C. Donna Hansen
32 Brady Loop
Andover, MA 01810

ADA / IDEA—As a parent of a child with a disability . . . I support full implementation of IDEA and ADA. I understand there is an attempt to water down these great pieces of civil rights legislation. [Modified Form Letter #57] [The letter includes several personal stories related to access for persons with disability] One example given is: "Despite objections from members of the community, . . . the [County] Administration decided that no changes needed to be made and if anyone complain[ed] let them sue. This is the attitude with which they] consistently vetoed the [Somerset County Park] Commission's capital improvement budget. . . . Thus, I want to reinforce my opposition for any attempt to diminish the rights of Americans with disabilities. I became an American in 1978 because of the greatness of this country and the rights it maintains for its citizens.

216 Cheryl and Terry Schadt
1924 W. Sherman Ave
West Peoria, IL 61604

IDEA—We are writing to show our support for IDEA. Our son Ryan, who is developmentally delayed, is almost 2 years old. Before we know it, he will be ready to be transitioned into public school. We hope that IDEA will still be in full force and not be watered down by then. . . . The federal government can make cuts elsewhere.

217 Sheila Evans
P.O. Box 229
Henniker, NH 03242

ADA / IDEA—I support full implementation of IDEA and ADA by nation, state, and local government. [Language of first paragraph is similar to form letter #57 and #154; but, rest of letter is individualized.] When I read about such people as Sandra Jensen, the woman who was refused candidacy for heart/lung transplantation because of her Downs Syndrome, I know that we cannot afford to weaken the supports that are already in place for people with disabilities. You have the tremendous responsibility of measuring the progress and making sure that it continues.—despite the rhetoric that we hear from Dick Arney and Newt Gingrich. . . . Please keep strengthening the system

218 Dennis Ulmer
1007 Northwest 11 Place
Fort Lauderdale, FL 33311-6151

ADA—I object most strenuously to the proposed changes to ADA that legal action against state and local governments be brought only by the Attorney General. . . . I work for a city government in Florida and they use the ADA in a manner not to accommodate anyone, but to deny them benefits and job opportunities. They have made no accommodations to me that cost them any money, only allowing me to work a flexible schedule I do object when my job is restructured in such a way that they say I can no longer perform my job because they changed the duties, while giving the duties I formally did to another employee. . . . I indeed may take legal action against them, . . . Please keep some teeth in the ADA and allow individuals with a disability the right to work as much as we can

219 Michael Brennan, M.A., L.M.H.C., C.R.C.,
C.C.M.
Brennan Counseling, Inc.
11645 Biscayne Blvd.
Suite 307-F
North Miami, FL 33181-3138

General / ADA / IDEA—How can you possibly entertain the concept that private individuals would no longer have the right to sue? Have you any concept of the degree of fear individuals already face in bringing suit? I can tell you as a representative of two associations, that most are scared to death. It is only through individual complaint that any individual can achieve non-discriminatory practices that have been and still are ongoing! I know from many personal complaints filed with DOJ, that even a response takes literally months. That is being generous, when I know final resolution takes more than a year! Don't take away what we are only beginning to achieve towards access and equality! . . . Allow us to demonstrate our abilities with some dignity. Let us have our day in court.

220 Sara Nambookiri
708 Oxford Circle
Tyler, TX 75703

ADA—[Telephone Comment] Please don't repeal ADA. The employment provisions under ADA helped to get job back teaching.

221 Michael Daeschlein
514 Highland Street
Williamston, MI 48895

ADA / IDEA—I am deeply concerned by many of the Commission's recommendations related to people with disabilities and our country's responsibility to their equal rights. Probably the most appalling recommendations are those that eliminate the individual's right to sue under the IDEA and ADA. I do not think I exaggerate when I characterize these recommendations as *Fascist*. To deny the voice of individuals and allow only state or federal agencies to bring court challenges is undemocratic and un-American. Further, to attack ADA and the IDEA as unfunded mandates is misleading at best. . . . I am not offering a cost-benefit argument. Rather, my point is that people spend money to support their prejudices; expecting that we instead spend money to support our constitutional principles is entirely reasonable. I strongly urge the Commission to reverse its recommendations regarding court challenges and to support both the ADA and IDEA as they exist[sic], with no options for delaying or repealing any of the Act's provisions.

222 Yadi D. Mark
Director, Government Relations
Paralyzed Veterans of America
Bayou Gulf States Chapter
3650 18th Street
Metairie, LA 70002

ADA—Unfunded mandates . . . should not have included ADA. ACIR has no authority to review ADA . . . Without the right to sue, the ADA would not get enforced. the ADA is a give and take legislation which takes into consideration “undue hardship”, “reasonable accommodation,” and “readily achievable.” Many issues must be decided on a “case-by-case” basis. . . . It has been more than 20 years since the passage of the Rehabilitation Act of 1973 and 5 years since the passage of ADA. . . . In the city where I live, New Orleans, there is no transition plan which was required by January 26, 1992. The city has no ADA coordinator, nor has it done a self evaluation of their current services, programs, and activities. Structural changes, required by January 26, 1995, have not been made. It is unfortunate that many public entities have yet to comply with the most fundamental aspects of their responsibility under the law. If public entities had complied with the requirements of the Rehabilitation Act, most of them would have met the ADA requirement and they would not be crying “unfunded mandate.” The message that ACIR is sending to the American people is that “America is not yet serious about providing civil rights to people with disabilities.” A modification of some deadlines and requirements to title II entities is wrong.

223 R. J. Driskill, P.E.
Planning Engineer
Oklahoma Department of Transportation
200 NE 21st Street
Oklahoma City, OK 73105-3204

General / CWA / ESA / ODOT finds the Clean Water Act (CWA) stormwater management requirements onerous. ODOT has been forced to expend hundreds of thousands of dollars to meet requirements which are unclear as to the responsibilities of state governments. ODOT supports the full funding of these mandates. If full funding is not possible, then the mandates should be dropped or allow cities to develop their own plans and timetables as recommended. ODOT believes some benefit/cost analysis should be a requirement for listing species and their habitat in any reauthorization of the Endangered Species Act (ESA). It may be difficult to do this, but natural resource agencies can question the benefits of transportation projects and often transportation projects have benefit / cost analyses attached to project approval. ODOT believes the same should apply to federal government programs, regulations, and rules. ODOT fully supports reauthorization of ACIR. The review of usefulness and cost of federal rules and regulations should be an on-going task.

224 Lori Sondora
11 Heather Lane
East Granby, CT 06026

IDEA—[Modified Letter #123]—As a mother of a small multihandicapped girl, I am outraged that ACIR has recommended that either IDEA be funded by the federal government or relieve state IDEA's costing requirements and that only state and federal agencies NOT PARENTS could challenge a due process decision in federal or state court.

225 Michael P. Ripple
Executive Director
United Cerebral Palsy Assoc.,
Metro Boston, Inc.
71 Arsenal Street
Watertown, MA 02172-2695

ADA—I recently . . . [read] the letter of Justin Dart to you . . . I was struck by the ACIR recommendation that the "ADA requirements should be temporarily or permanently suspended, or made voluntary . . ." Reading the letter, I became aware that most Americans have a staggeringly solipsistic view of their inalienable rights. [The letter describes expectations that the subway be running and that an escalator, elevator or stairs will be there to reach the track; that the doors will be available conveniently at your office and that an elevator will be convenient and working; that the grocery store will have automatic doors and that parking spaces will be available.] How has the average American become so convinced of their right to these [modern conveniences] and become so selfish, they do not want to extend these rights to others? . . . Ask your committee what it would do to their lives if they couldn't use public facilities? Ask them how they would feel if they had to relentlessly pursue major civil rights legislation just to get or maintain a job? I am sure they would find such a hypothetical question totally unreasonable and preposterous. Well?

226 Leslie W. Williams, Jr., Director
Law Enforcement Council. of Conn., Inc.
401 W. Thames St., Unit 2401
Norwich, CT 06360-7164

FLSA / FMLA / OSHA / General—"On behalf of the 18 Municipal Law Enforcement Agencies in Southeastern Connecticut that our Law Enforcement Council represents, we unanimously SUPPORT the recommendations of the Commission as stated in the referenced report. Of particular concern are the recommendations related to the FLSA, FMLA, and the OSHA."

227 Mark A. Jordan
188 Kahn Road
North Franklin, CT 06254

ADA / IDEA—ADA: In actuality, ADA does not mandate a single disability accommodation nor does it mandate the spending of even one dollar. ADA is a civil rights law that establishes broad principles including that all Americans, with or without disabilities, are legally entitled to full participation in as well as benefit from everything that our society has to offer. . . . ADA does not require the construction of a single ramp or the installation of a single elevator or other technological device. ADA does, however, allow a broad range of options to achieve goals such as equal or equivalent service or benefit, equal participation, and integration of citizens with disabilities. Even where the only way to achieve the requirements of ADA is through expenditure of funds, ADA allows the “readily achievable” standard to be taken into consideration in determining whether an entity will be required to make the necessary accommodation. “Readily achievable” has been widely understood and interpreted to include the fiscal cost of an accommodation with the overall scope of operation and budget of an entity taken into account. **IDEA:** . . . rolling this law back would return us to the bad old days when students with disabilities simply were not educated or were relegated to segregated institutions for “education of handicapped children.” We are still and will be for some time laboring under the harm done by this treatment of young people with disabilities. . . . These people [people uneducated or undereducated] are now chronically unemployed and permanent welfare recipients. Supporting a person for his or her whole life with public benefits is hardly a way to [use? save?] public dollars. . . . The cost of these accommodations [accommodations necessary in schools] is, of course, the primary objection to the continuance of IDEA. In fact, most accommodations are relatively cheap. It is only the few expensive ones that get the negative attention. The fact is that most school systems resist accommodations vigorously and will only provide them when they feel “forced to” by parents, lawyers, and advocates. Even something as simple as offering a class in a wheelchair-accessible setting is resisted. . . . litigation by individuals . . . is always a “court of last resort” because, 1) the long delays in getting redress even when successful, 2) the cost of such litigation makes this impractical for most individuals and families, and, 3) when help is available from organizations such as legal aid, protection and advocacy agencies, etc., the sheer number of cases for which their help is solicited forces them to take on only the very most worthy ones. Only a tiny minority of cases which actually could be argued in a court of law ever get filed. The vast majority are settled in some form of alternative dispute resolution, . . . the point was also made that organizations and agencies that provide legal assistance or, such as DOJ, that actually enter as a litigant, do not begin to have the resources to litigate every worthy case. . . . Consequently, removing the final recourse of private action now available to individuals and families would leave most aggrieved persons with no practical means of obtaining redress.

Loreen Loonie
Advocacy Director
Eastern Paralyzed Veterans Association,
75-20 Astoria Blvd.
Jackson Heights, NY 11370-1177

individuals and families would leave most aggrieved persons with no practical means of obtaining redress.

ADA—EPVA strongly opposes the ACIR report on unfunded mandates as it pertains to ADA. . . the ADA is a law that was written to incorporate fairness and flexibility for all entities covered while providing the maximum inclusion of people with disabilities in all aspects of society, including access to state and local government services. [The letter expresses disagreement with inclusion of ADA in ACIR's review.] . . . we agree with several points the ACIR report has recommended. We strongly agree that the federal government needs to do a better job of distributing information and providing technical assistance. We, too, have had trouble accessing publications and experts in a timely fashion. We also feel DOJ should improve ADA enforcement efforts. However, advocating for the consolidation of all enforcement to DOJ, already overburdened and under funded, would effectively reduce enforcement instead of "clarify and simplifying" the process. . . . ACIR recommendations represent a fundamental misunderstanding of the ADA and its requirements. For example, state and local governments have the most flexibility of all ADA covered entities to define their own methods of compliance. State and local governments are required to provide only program access eliminating the responsibility, in many instances, to remove barriers (a requirement of even the smallest businesses provided barrier removal is readily achievable). The requirements imposed on state and local governments by ADA are neither "strict" nor "rigid" and, most importantly, are not new requirements [reference is made to the Rehabilitation Act of 1973] The heightened awareness of their responsibilities, reiterated by ADA, has resulted in backlash evidenced by the ACIR Report. Making compliance with a civil right law voluntary is offensive. . . . Calling ADA compliance an "unfunded mandate" is an example of short term thinking on the part of our elected representatives. It is the contention of EPVA that the citizens of our country would rather fund the provisions of access to state and local government programs, including curb cuts, than use tax dollars to keep people with disabilities at home, unemployed, and unable to offer their skills to the community. Finally, limiting people with disabilities' rights to pursue individual legal actions under the law is unconscionable. . . . Limiting one's right to a private action gives enforcement agencies too much power to decide which cases have merit and which do not. Also, in our experience, enforcement agencies choose cases according to their potential to set precedents, hoping to educate other covered entities in order to promote compliance. As a result, enforcement agencies choose large entities, or hot issues, to pursue leaving people with

228 Loreen Loonie (cont.)

disabilities who have lower profile cases no means to enforce their rights. . . . EPVA appreciates the opportunity to comment on this matter and hopes that ACIR will ultimately remove ADA from its final report or substantially alter the draft to reflect the costs of noncompliance.

229 John H. Stroger, Jr. [on behalf of several organizations representing persons with disabilities]

Office of the President
Board of Commissioners of Cook County,
118 North Clark Street
Chicago, IL 60602

ADA / IDEA—[Mr. Stroger submitted the following comments on behalf of: Access Living, the Council for Disability Rights, the National Multiple Sclerosis Society, the Progress Center for Independent Living, and other organizations that share their concerns. He states: "I concur with these important points of view and think they should be given serious consideration."] The comments submitted are as follows. 1. . . . support full or increased federal funding of the ADA and IDEA, as called for in the ACIR report. 2. It is unconscionable to say that local government needs more time to comply with the ADA. The ADA was enacted in part because local governments were taking too long to live up to their obligations. 3. . . . while there are many flexible federal grants that can be used to increase access (such as many categories of transportation funds), they are usually not used for this purpose. If it were not for the ADA, governments would generally not consider access as a priority in spending funds that they do have. 4. . . . objected to the ACIR's recommendation that the right of individuals to sue under IDEA and ADA be taken away. They challenged the perception that the number of suits under these two Acts is particularly large. For instance, a Georgetown University study . . . showed that, over a 17 year period, there were only 1,211 IDEA disputes, amounting to about 1.3 out of every 100,000 students helped by the Act. 5. . . . investments "up front" to make education, jobs, and other empowering aspects of life available to the disabled are money well spent because they prevent or lower future government spending. For instance, if transportation for the disabled were more widely available, the unemployment rate in the disabled community might not be as high as its current 64%; many of the disabled unemployed receive welfare or other benefits.

230 James J. Tobin
Center on Hope
PO Box 2048
Conway, NH 03818

ADA / IDEA—I object to the watering down of IDEA / ADA laws. For me, if it was not for the ADA I could not get into a lot of places if they were not ramped. This law helps me to go to places that I could not access (malls, restaurants, etc.) The ADA makes it relatively easy for me to get around. The law also means that my family can take me to places that I could not go before the law came along. Once again, I urge you not to water down this very important law.

John D. Walsh
Executive Director
Metropolitan Center for Independent Living,
Inc.
1600 University Ave. West
Suite 16
St. Paul, MN 55104-3825

ADA / IDEA—We are opposed to the changes to IDEA and ADA recommended by ACIR.
IDEA: The recommendations of the commission are a direct attack on the civil rights of people with disabilities. . . . The proposal to remove the right of a parent to sue the local school district for non-compliance, in effect, authorizes the school district not to comply. . . . Parents must have appropriate and effective means to redress grievances against schools and school districts. . . . It is the practice of most advocates in the disability community to encourage people to educate, negotiate, and then, as a last resort, litigate. . . . **ADA:** There are several inaccuracies and inconsistencies in the ACIR recommendations with respect to ADA. Many of the changes mandated by the ADA were mandated by the passage of the Rehabilitation Act in 1973. School districts have had more than enough time to find funding sources to provide equal access; but have for the most part failed [to] make the effort. Local governments that claim compliance with ADA is too expensive may not be looking at less costly alternatives. They need to consult with advocates within the disability community to find ways to meet the mandates in a cost effective manner. It does not need to cost a great deal of money to meet the spirit of the law if not the letter of the law. As for the confusing and ambiguous language contained in the ADA, most civil rights laws have used the vagaries of legalese to provide room for case law to further define the language and set precedent. The ADA is no exception. Technical assistance provided by the federal government is only as good as its support from Congress and the President. DOJ has had its budget cut, so the number of staff assigned to give technical support for the ADA has been reduced. But, in addition to DOJ there are 10 Disability Technical Assistance Centers around the country which are available to provide technical assistance. The federal government has not appropriated funding for local governments to comply with the ADA because funding is the responsibility of the states. At the same time, the states are asking the federal government for more power to decide which mandates they will fund. The federal government will not grant this power, and rightly so. Therefore, the states have created a dilemma for themselves and they go begging to the federal government. The phase in dates for compliance have been widely publicized for several years. Contrary to popular belief, passage of the ADA has not created a deluge of law suits. Penalties for non-compliance were set low and the system was provided much latitude with regard to assessing non-compliance. It is time our society stops claiming that the civil rights of people with disabilities are too expensive. . . . There should be no permanent exemptions for communities who claim that compliance with ADA is fiscally impossible. Temporary waivers could be an option; but these temporary waivers must contain a definite end date and a specific step by step plan by which the community will come into compliance.

232 Geoffrey S. Obrzut
Executive Director
United Cerebral Palsy of Will County, Inc.
311 South Reed Street
Joliet, IL 60436

IDEA— . . . writing to express opposition . . . UCP of Will County feels strongly that the recommendations made by ACIR, if implemented, would have a negative impact on the rights of people with disabilities. . . landmark court decisions have mandated educational rights for students with disabilities and their families. With or without IDEA and funding from the federal government, the requirement to provide a free, appropriate public education continues to be a state responsibility. Many families have been dragged into the “litigious” aspects of IDEA only because the state failed to provide a free, appropriate education for their child. If implemented, the ACIR recommendation would deny access to courts for these families who have exhausted every other means of eliminating discriminatory practices against their son or daughter to resolve disagreements with the schools. Our agency opposes the ACIR recommendation on this issue, because it would gut the essential due process protection of the law.

233 Charles M. Tebbutt
Staff Attorney
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401

(Environment)—[The letter endorses and adopts the comments submitted by James Hecker of Trial Lawyers for Public Justice (Comment # 115)] . . . citizens understand the difficult positions in which municipalities often find themselves relating to compliance matters. . . . There are situations, however, where a municipal or state government has abused its duties to protect human health and the environment. In those situations citizen suits are essential to ensuring that the spirit of the law is followed. Without citizen enforcement capabilities, these situations improperly become political questions and the environment suffers . . . Also, there are situations where a municipality becomes subservient to an industry. The industry, often responsible for creating the problem, exerts undue influence on a municipality that is concerned about losing jobs. Citizens are able to step in to provide necessary pressures to get the municipality to comply with the law which then causes the industry to reduce its pollution. Or it may simply be that the government entity is simply thumbing its nose at the law. It is in these types of situations that the availability of citizen suits is critical. Citizens do not have to kowtow to misplaced economic blackmail or improper political pressures. Congress recognized the important role that citizens play in the enforcement process when it give citizens enforcement powers in the environmental statutes.

William W. Altaffer, Esq., et. al.
MDA National Task Force on Public
Awareness
Muscular Dystrophy Association, Inc.
3300 East Sunrise Drive
Tucson, AZ 85718-3208

ADA/IDEA—ADA: Title II of the ADA and the IDEA are not unfunded mandates but rather civil rights acts . . . There is substantial amount of flexibility built into the statutory and regulatory language of these acts relating to compliance which serves to mitigate any burden which might otherwise be placed on state and local governments. It seems unnecessary and unjust to compromise the civil rights of approximately 49 million Americans with disabilities because of budget constraints. MDA endorses ACIR's recommendation that the federal government provide increased funding to assist local governments to meet the requirements of both the ADA and IDEA. Increased funding will hasten our nation's progress toward equal opportunity for persons with disabilities. Conversely, relaxing the compliance standards as an alternative to increased funding will only further delay necessary advances and progress. Another troubling recommendation . . . is to deprive the public of a private right of action to enforce both ADA and IDEA . . . The fact is that there has not been a lot of litigation over Title II of the ADA. [*Footnote:* "From the U.S. Justice Department Website: *Myths And Facts About the ADA*—The ADA has resulted in a surprisingly small number of lawsuits—only about 650 nationwide in five years. That's tiny compared to the 6 million businesses, 666,000 public and private employers; and 80,000 units of state and local government that must comply.] The purpose of much of the board language of Title II is to provide flexibility, protecting local governments from undue financial and administrative burdens. It appears contradictory for the ACIR, a commission charged with exploring ways to reduce the role of federal government, to recommend that Americans with disabilities become completely dependent on the U.S. Attorney General for the protection of their rights under ADA. It has long been established that protection of fundamental civil rights should not be exclusively entrusted to any single person, agency, or even branch of government. This plan to eliminate the ADA's private cause of action would greatly minimize ADA protections, and would entail inefficient, expensive, and intrusive federal supervision of state and local governments. *IDEA:* The process of developing an individualized educational program for each student covered by the IDEA is an alternative dispute resolution procedure which includes impartial due process hearings. Requiring another form of alternative dispute resolution only adds costs and burdens . . . By the time parents reach the point of going to court, they have already tried to resolve their differences with the schools. It is our understanding that litigation has not been a problem under the IDEA, that on average between 1978-1994 most states have had less than two cases per year. Leaving enforcement to government bureaucracies will be far more expensive than the right of private action. ACIR

234 William W. Altaffer, Esq., (cont.)

recommendation serves to limit the right of private citizens, . . . and increases the responsibilities of state and federal governments without any recommendation that there be increased funding to support these added responsibilities. [Included negative comments about the flyer advertising the Mandates Conference and the concept of a conference in general.]

235 Jane Riese
11749 Greenwood Ave North #100
Seattle, WA 98133-8100

ADA—TEMPORARY OR PERMANENT SUSPENSION OF ADA FOR CERTAIN COMMUNITIES: Not an intelligent option. Communities without fiscal capacity to comply have had the same deadlines and graceful loopholes given all businesses since 1990. I can sympathize to an extent, however, with those smaller communities facing drastic government cutbacks and consequent economic plight. Perhaps those communities with fewer than 7% of their populations facing the double digit economic blight imposed by disability could be waived from ADA requirements. Residents and consumers in those communities would do well to move to more accessible and accepting areas, with government compensation for moving expenses and government assistance in finding accessible, affordable housing—and take their purchasing and voting power with them. . . . **BARRING INDIVIDUALS FROM SUING STATE/LOCAL GOVERNMENTS:** Will this apply to individuals belonging to other minorities as well? . . . Rational beings are not going to sue wantonly and frivolously. The ADA is already quite clear about appropriate litigation. **COSTS AND VAGUE TERMINOLOGY:** The compliance deadlines of the ADA since 1990 have been commendably liberal and flexible. Even businesses which choose old, inaccessible buildings in which to operate are exempt from penalty. . . . **FEDERAL ENFORCEMENT; LACK OF SINGLE REGULATORY AGENCY:** A suggested intelligent option: Appoint one, populated by some private citizens such as those on your Commission—including consultants with disabilities well versed on the current issues. Mr. Dearborn, you and the Commission have my positive regard for your sensitive position in resolving some of the resistance encountered by the disabled population and the ADA. . . . Given all of above, and the economic reality of our times, I still find it a pathetic commentary on our “advanced” civilization that the civil rights of our disabled citizens may be compromised.

Francis B. Francois
Executive Director
American Association of State Highway and
Transportation Officials (AASHTO)
444 N. Capitol St., NW,
Suite 249
Washington, DC 20001

Metric/ Crumb Rubber/ CWA/ ESA/ Davis-Bacon—We believe ACIR has done an excellent job in identifying problem areas for state and local governments with federal mandates. AASHTO has several policy positions developed over the last several years that mirror the ACIR recommendations on federal mandates, with the exception of metric conversion. [A package of policy position materials is attached to the letter.] **Metric:** AASHTO and its member departments have invested considerable amounts of effort and money into metric conversion. . . . 39 of 49 States surveyed by AASHTO said they would not make use of the recently passed deadline extension; they will not delay their metrification efforts. **Crumb Rubber:** AASHTO calls for repeal or modification of the ISTEA requirement to use recycled crumb rubber in asphalt pavement. **CWA:** AASHTO urges Congress to “Authorize full funding for requirements in the CWA and fully appropriate all authorized funding. Adopt language which takes into account the adequacy of federal funding as a factor in determining reasonable progress toward attainment of water quality goals.” **ESA:** AASHTO calls for greater flexibility in the application of the ESA. **CAA:** AASHTO policy is consistent with the ACIR recommendation to “Permit states to develop their own ways of meeting federal air quality standards, and eliminate financial air penalties if states are making good faith efforts to comply. **Davis-Bacon:** AASHTO calls upon the federal government to “Consider further opportunities to minimize the number of covered projects” under the Davis-Bacon Act. This is consistent with the ACIR call for amending the Davis-Bacon Related Acts to exempt projects below a larger dollar threshold and below a certain federal percentage of cost sharing. AASHTO has called for the repeal of the Davis-Bacon requirements on Federal-Aid construction projects. [The letter encloses AASHTO’s December 1995 *Reauthorization Policy Statements* which has considerable discussion about Federalism and the Federal vs. State, Local role in transportation activities.]

237 **Marca Bristo**
Chairperson
National Council on Disability
1331 F Street, NW, Suite 1050
Washington, DC 20004-1107

ADA / IDEA—NCD is an independent federal agency with a 15 member board appointed by the President and confirmed by the Senate. We assert that ACIR has unfortunately misunderstood the philosophical underpinnings of IDEA and ADA . . . [The letter quotes *the Unfunded Mandates Reform Act*, Sec. 4 Exclusions.] [The letter also quotes the ACIR report language saying: “. . . some activities are so important to national interests that a federal role is generally accepted as necessary. Among the most obvious is legislation protecting civil rights”] The letter concludes with the following statement: NCD strongly objects to the consideration of IDEA and ADA within ACIR’s report on unfunded mandates. From a legal as well as moral standpoint, this is not the forum to be tampering with the hard won civil rights of one out of every five Americans!

238 **Constance Ergen**
Governmental Affairs Consultant
ARC-Allegheny
1001 Brighton Road
Pittsburgh, PA 15233-1780

ADA / IDEA—The report made several misleading and otherwise irresponsible negative references to the ADA and IDEA. Related press coverage contained statements that were disrespectful of the rights of individuals with mental retardation and other disabilities. We request that the final report be corrected and political opinions of members of the committee be withdrawn and address what the commission was created to address. . . . ADA and IDEA do not create any undue burdens on state and local government. ADA specifically states that no community can be forced to make changes which would impose an undue economic hardship. It is wrong to imply that the opposite is true. Communities who call for flexible implementation can do so by using the remedy written into the law. . . . A principle purpose of civil rights laws is to protect citizens against oppressive government A right with no citizen remedy is no right. Further, parents do not abuse the process . . . Our Director of Special Education Services in PA recently was quoted as saying, “out of the 285,000 students in special education, there were only 117 due process hearings in 1995.” We feel this is an extremely low number. ACIR’s recommendation that ADA implementation should be voluntary is alarming. . . . People with disabilities call on national, state, and local government, the private sector, the public media, and the disability community to make full implementation of the ADA and IDEA a first priority. We will work with individuals, businesses and government at all levels to create common sense solutions We support emphasis on education and training. Our state officials believe that changes need to be made at the university level to train educators in the field of disabilities We request that Congress provide increased funding that will enable federal, state, and local agencies to fulfill their ADA and IDEA monitoring responsibilities. . . . it is self-evident that every person in this nation has a vested interest in the success of ADA and IDEA.

239 Pamela Breed Bonavita
James C. Harrington
The Americans With Disabilities Act National
Backup Center
7800 Shoal Creek Blvd.
Suite 171-East
Austin, TX 78758

ADA / IDEA—[This letter is essentially the same as Comment #202.] There is some unique language particularly regarding funding formulas. The letter indicates support for “the current IDEA draft bills that would require states to have a funding system that does not act in opposition to LRE requirements. The letter also contains some unique language regarding lawsuits. In particular, it is noted that parents are not entitled to attorney’s fees unless they prevail. The letter concludes by saying: “All of the above discussion is somewhat moot, however, as the ADA and IDEA are specifically excluded from the Unfunded Mandates Reform Act. . . . we oppose all recommendations as the ADA and feel the IDEA recommendations should be significantly modified.

240 Dorothea A. Bawks
Ronald J. Bawks
30428 Charmaine
Roseville, MI 48066

IDEA—I am a 42 year old Dyslexic with ADD. I am married to a 44 year old Dyslexic with ADHD and Bi-polar disorder. . . . The difference between what my husband and I have faced without the benefits of utilizing IDEA for our own education and the incredible strides that our children have made with it, is remarkable. With two thirds of our present day prison population unable to read and write, we believe that IDEA is as vital to correcting our present day crime rate as any costly punitive system we have or ever will devise. . . . But IDEA works. And “If it ain’t broke, don’t fix it”. We urge you to find something else that is broken and fix it instead. . . . I would like to see Congress give the states more money, so that IDEA can still become the effective law it was designed to. We’re not even all the way there yet and now it seems as though the purpose and intent of IDEA may be altered. . . . The funding and intent of IDEA must not be changed. We are proud to live in a country where our children also have a right to a free and appropriate public education. As parents of disabled children we are the best advocates they will ever know. . . . we know them intimately and study them well enough to know what kinds of services can make a difference between failure and success for them. IDEA provides us with the tools we need to insure that our children will have an equal opportunity . . . We would be totally powerless if we could not access legal services, and the judicial system to challenge school officials (however well meaning) to move off their squares and implement the laws that protect our children . . . Making the schools pay the attorneys fees, is in direct alignment with the purpose of any civil rights laws . . . In fact, I believe that there is much more retribution still to be delegated to those who discover their disabilities in adulthood, including mandates for corrective education so that they too may become productive taxpaying citizens. . . . Our children are allowed to use special technologies in school, such as textbooks on tape, tape recorders, calculators, hand held spelling devices, computer written assignments, all of which we provide. But the usage of which we had to fight very hard for. . . . we had to fight like hell to get the school’s permission for them to use them inch by agonizing inch. So you see we can not support the ACIR IDEA recommendations. . . . We are just one family in a humongous pool of voters who feel they must have protection under IDEA.

241 Linda Anthony
Executive Director
Pennsylvania Coalition of Citizens with
Disabilities
The Executive House
101 S. Second St., Suite 4,
Harrisburg, PA 17101

ADA / IDEA—This letter responds to the preliminary ACIR report which includes misleading and negative references to ADA and IDEA. The ADA is not an unfunded federal mandate. . . . They are our Bill of Rights. . . . There have been federal regulations requiring recipients of federal money (such as states) to not discriminate against people with disabilities since 1978. Even though most states have not obeyed these regulations, the federal government does not withhold federal funds from them. Now, almost twenty years later, state and local governments are still trying to find ways to exclude citizens with disabilities from their own communities. . . . Money spent to allow all Americans equal access under the law is money well spent.

242 Amy J. Lerner, et. al.
Governmental Activities Committee (GAC)
of United Cerebral Palsy Associations of New
Jersey (UCPA/NJ)
Southern Regional Office
1040 North Kings Highway, Suite 303
Cherry Hill, NJ 08034

ADA / IDEA—[This is a cc to Chairman Winter of a letter sent to Representative Donald M. Payne.] [The letter is signed by 18 people.] Our major concern with both ADA and IDEA is that they are first being considered Unfunded Mandates before they are being thought of as civil rights laws. . . . ADA: Certain terms used in ADA, i.e. "reasonable", "undue," or "readily achievable", were included so as not to cripple any entity by requiring compliance that was beyond their financial means. The ADA does not require that everything be torn down and all new facilities be built immediately, but rather, that any new construction or renovation be designed to be fully accessible. . . . Communities without financial resources to retrofit all of their facilities are already protected under the ADA by the provisions which says that Title II entities can make "reasonable modifications" to its programs to allow people with disabilities to participate or take part in local or state government activities. We have a hard time believing that there is any community that could not at least perform some of the less costly tasks required by the ADA such as designating an ADA Coordinator, conducting a self-evaluation, and establishing timelines for the modification of policies, programs, services, activities, and facilities. We disagree with the ACIR recommendation regarding legal action . . . Removing from citizens the right to seek relief from the courts for actions that are contrary to law should never be taken out of the hands of those citizens. . . . IDEA . . . IDEA was a ground swell that resulted from legal challenges in over 20 states for children with disabilities to receive any education The federal guarantee of a free and appropriate education for children with disabilities was needed in many cases just to allow these children to get in the door of the school. We heartily endorse the ACIR recommendation to "to increase federal funding to the 40%" This would help districts deal with the increased costs associated with complying with the provisions of IDEA. We strongly object to the recommendation "to relax some of the most costly requirements . . ." We feel that those requirements which will be eroded are the very ones which in many cases have even allowed children with disabilities to become students with disabilities. . . . We suggest that the reason resolution of IDEA disputes has become litigious is not because education is being denied, but that often the education that is offered is totally inappropriate to the specific needs of that particular child. The litigious and adversarial relationship which sometimes develops generally results from school districts not following the requirements currently mandated by IDEA. . . . We agree that alternative dispute resolution procedures should be used whenever possible before resorting to due process procedures, but we strongly disagree with the recommendations to "Eliminate the statutory right of individuals to bring court actions . . ." Parents are often left with no options except legal remedies when such services are the only choice available. To remove parent's right to those legal remedies is to gut the law of any enforcement they have at their disposal

- 242 Karl Campbell (*cont.*)
services are the only choice available. To remove parents' right to those legal remedies is to gut the law of any enforcement they have at their disposal.
- 243 Sandra Cort, Vice President
Learning Disabilities Association of Maine
302 Water Street
P. O. Box 385
Gardiner, ME 04345-0385
ADA / IDEA—Not unfunded mandates but are civil rights laws. . . . The recommendation that individuals and families should not have the right to initiate legal action to remedy denial of the rights is of grave concern to LDA. This recommendation will not ensure that the rights of children and adults with disabilities will be protected, it would erode that protection. . . .
- 244 Karl Campbell, President
Puget Sound Council of Senior Citizens
2800 First Ave, Room 262
Seattle, WA 98121
ADA—We are a Senior Citizens organization. We have seen the benefits to our members accrued from the ADA. In our meeting today our members asked me to urge you to in no way weaken this program. It is doing a needed job, but its mission is far from complete.
- 245 Linda Kay Norris
6665 Manring Court
Columbus, OH 43068
Misc—When the average citizen gets an opportunity to peek into the inner workings of government such as I have had with reading your recent report, it becomes appallingly apparent the extent to which politics permeates every level of government functioning . . . you know who's buttering your bread, and it is glaringly obvious in this report . . . your report leads me to believe that unfunded mandates are only a smoke screen for serious, long-range political objectives supported by a reactionary, self-serving political minority typified by Mr. and Mrs. Private Property Rights living in white-bred suburbia who have seriously confused the value of a dollar with the value of human lives and healthy ecosystems. I agree with the correspondence to you from the White House about this report and believe that your recommendations overstep the bounds of your mission and that you have totally failed in your overall goals. . . . you have proven to me that this self-righteous indignation over federal preemption is little more than privileged, white male whining over the well-deserved hits they've taken over the past 40 years of social progress. It is my recommendation that your agency be abolished since it clearly cannot function as an independent, objective agency designed to help our government function properly. Your report should probably be adopted as part of the 1996 Republican platform since clearly that is its true intent. It is a shameful perversion of public resources and a major disappointment to me. . . .

246 Sharon Lynn Campbell, M.A.
Certified Safety Professionals
S.L.C. Communications
509 Barbara Circle
Fairless Hills, PA 19030

ADA / IDEA—Neither [ADA / IDEA] is supposed to be examined by your commission. . . .
ADA: The ADA became necessary because of the lack of compliance and/or enforcement of previous legislation designed to enable people with disabilities to participate in daily life. . . . Now, Mayor Rendell (Philadelphia) whines, we just don't have the money. He did, however, have the money to fight the ADA clear to the Supreme Court (and lose!) He . . . chose to continue building artificial barriers for people with mobility impairments. In essence, Mayor Rendell and his colleagues are now demanding to be rewarded for refusing to comply . . . And they are using this Commission to do their dirty work. . . . ACIR has suggested that suits against state and local governments be initiated only by the (nonexistent) federal ADA enforcement and assistance agency. . . . Without the threat of individuals suing for compliance, civil rights-minded individuals as Mayor Rendell wouldn't do a damn thing The idea of having a single agency responsible for ADA enforcement and assistance is a good one, but only if the staff consists of at least 80% people with disabilities. The EEOC is overwhelmed, and has been ineffective in enforcing the ADA, so removing compliance from its workload is a good idea. . . . **IDEA:** . . . When my parents tried to enroll me [in school], they were strongly urged to put me, with my moderate hearing loss and clear speech, into a deaf school I would never have gone to college, become a safety professional and become a professional writer and public speaker. My parents didn't have IDEA, but they did have the idea that I was as entitled to an appropriate education for a bright child. . . . If you gut IDEA, you'll never know what the cost to society will be. But I do know what the cost will be to thousands of disabled children; I paid part of it personally during school, and through 20 years of psychotherapy afterwards. . . . I you are lucky enough to live a reasonably long life, you will acquire disabilities as you age. Think carefully about what you recommend today: you'll have to live with it yourself!

Paul R. Willging, Ph.D.
Executive Vice President
American Health Care Association
1201 L Street, NW
Washington, DC 20005-4014

Boren—We believe the Commission's recommendation to repeal the Boren Amendment ignores the history of states in the Medicaid rate-setting process and rests upon a number of misconceptions and faulty assumptions. Note, the Boren Amendment is the only [mandate reviewed by ACIR] in which state governments are third-party payers in contractual relationships with the federal government rather than employers having to meet the various standards described in the mandate. Inclusion of the Boren Amendment . . . represents a stark failure on the part of the Commission recognize the difference between the Boren Amendment and how it operates and the other laws reviewed and criticized. . . . In the case of the Medicaid Program, . . . federal funds are provided. State governments are only penalized with the loss of federal funds when they fail to comply with their contract with the federal government by not making timely submission of a state plan amendment when significant changes are made in the reimbursement methodology for institutional health care providers. . . . The Boren Amendment, and the litigation which has grown up around it, have derived in large part from the ever-increasing regulation of nursing facilities by state and federal governments, and the inability or unwillingness to recognize that each additional regulatory requirement adds to the cost of providing service for providers. The corresponding failure of states to fairly and adequately match their regulatory expectations with commensurate reimbursement has been the catalyst for Boren Amendment lawsuits. [Regarding the ACIR common issue discussion that "Only the federal agency responsible for enforcement of a law should be permitted to sue state and local government,"]—"To leave to federal agencies, which themselves are frequently underfunded, enforcement of those laws would be to make a mockery of the process." [Additional comments on the following specific concerns]—(1) One of the concerns expressed in the Report is the failure of the federal government to issue regulations defining . . . "vague terms." We agree that is a valid criticism. . . . the federal government has left the states to determine what is an "efficiently and economically operated provider." As a result, there has been a substantial difference in how the courts have evaluated that standard. Nevertheless, it is somewhat ironic that the thrust of the report . . . is to give the states more responsibility and flexibility and [yet] . . . when states are given flexibility in connection with defining "vague terms," the report complains. . . . We do not believe the states can have it both ways. (2) We are unaware of any decision by any federal court under the Boren Amendment which holds that a nursing facility is entitled to "all costs incurred by providers" as part of its reimbursement. What the courts have held is that states are required to pay rates adequate to reimburse efficiently and economically operated facilities for the cost of providing care which meets federal and state quality and safety standards. (3) . . . The notion that state "negotiate" rates with providers is incorrect. . . . history has shown, states set the rates often based on purely budgetary considerations, and present

standards. (3) ... The notion that state “negotiate” rates with providers is incorrect....history has shown, states set the rates often based on purely budgetary considerations, and present them to providers on a “take it or leave it” basis. Furthermore, the report does not deal with . . . the “care side” for which the reimbursement is mandated. Again, as history has shown, without the Boren Amendment states will merely require through regulations high standards of care without negotiating in good faith for reimbursement adequate to fund that care. It has only been because states have refused to negotiate in bad faith that providers have been forced to resort to Boren Amendment suits. . . . (4) States are not required to participate in Medicaid. They make the election to do so. States are paid a substantial amount of money in federal matching funds. . . . They agree by contract to meet federal standards. The federal government does not twist the arm of the states to accept its money. . . . The very procedures about which the report complains are designed to make sure that states are meeting their statutory and regulatory obligations to providers and recipients. It has been the failure of states to meet these standards which has forced courts to rule against them in numerous Boren Amendment lawsuits. The existence of a number of Boren Amendment lawsuits merely attests to the fact that many states have shown no willingness to comply with the law and their contractual obligations absent the threat of litigation . . . the fact that a state may be liable for “substantial retroactive reimbursements” is not the problem but merely the result of unlawful conduct on the part of the state—a result which the states could easily avoid by negotiating fair rates in good faith. *Summary:* . . . it appears what states are really complaining about . . . is the obligation to devote a substantial amount of their financial resources to care for the frail, indigent elderly rather than providing funds for other populations or programs which the state believes are a higher priority than the elderly. The increasing demand on state treasuries for funds [for the elderly] in many cases represents a reflection of demographics and in other cases the political inability of states to close loopholes in transfer of assets laws. . . . Debate should not be over an unfunded mandate but rather over what means can best be used to provide needed care to the [elderly] in an efficient and effective manner.

- 248 Nita Weil
4141 N. Braeswood, # 21
Houston, TX 77025
- 249 David Lamarre-Vincent
The New Hampshire Council of Churches
316 South Main Street
PO Box 1087
Concord, NH 03302-1087
- 250 Larry Kazziah
[Internet response; no address]
Birmingham, AL
- ADA / IDEA**—These two federal laws are the means by which people with disabilities are moved from dependency to independence and productivity. Any scaling down or watering down of these laws would ultimately escalate the burden of cost across society. It's just smart to move people out of financial dependency and into becoming productive citizens AND TAXPAYERS. Please consider these issues as if you were at the end of this concern.
- ADA / IDEA**—[Modified version of Comment #154] We support full implementation of IDEA and ADA by national, state, and local government. . . . the churches of NH have become very sensitive to removing all barriers—physical, psychological, and social; all people in our communities can actively participate in the community's religious life. Our experience has been that this is a benefit primarily for those of us who do not think of ourselves as disabled. . . . We oppose any attempt to water down these fundamental rights . . . Please keep the IDEA and ADA intact for all Americans.
- General**—Everywhere we turn we see activism against this great nation. Sure we have problems, but to lessen Federal powers to the States only creates 50 bananarepublics. We need a UNIFIED state In fact, that has a nice ring. i.e. ONE STATE and eliminate the 50 various governmental quirks that reduce this nation's chance of being great for centuries to come. All the clamor is on what is WRONG in Washington. I believe the media should concentrate on WHAT IS RIGHT! I'll defend this great nation against the veiled secession efforts of late. What we actually need is ONE STATE as I said before. Just think of the red tape that could be lifted and really bring LOCAL/County government up where it should be, rather than subservient to state politicians. Now. . . . I turn my soap box mode off.

COMMENT TOPIC

NAME & ADDRESS

- 251 Jock Robert Ian Christie
Internet: jchrist@leland.stanford.edu
- Metric**— . . . Considerable progress has been made in this country in the last decade towards adopting the metric system . . . turning our backs on this progress would be ludicrous, considering the amount of international trade that is already lost because of our national reluctance to adopt the metric system. Although there is no legal reason that all states should convert at the same time, there is a practical reason. It is the duty to advance the common interests of the states, and to ensure some level of uniformity as you cross the nation. General Motors was able to see the proverbial handwriting and voluntarily convert to metric. . . . I believe that you should maintain the metric mandate, and grant waivers in those few cases where true hardship exists.
- 252 Ginny Williams
Sixth Congressional District Task Force on
Disabilities
c/o The Honorable Newt Gingrich
3823 Roswell Road, NE
Suite 200
Marietta, GA 30062
- ADA / IDEA**—While the ACIR report contains some positive recommendations, we are concerned about several issues. . . . *Unfunded Mandates*: The ADA and IDEA are civil rights laws . . . it is inappropriate for ACIR to recommend changes to ADA and IDEA, and we recommend that they not be included in this report. *Elimination of the Statutory Right of Individuals to Bring Court Action*: To eliminate the right of individuals to bring court action would be a major setback in efforts to guarantee equal rights for citizens with disabilities. Regarding IDEA, we endorse the requirement of alternative dispute resolution prior to the initiation of legal proceedings. We are concerned, however, at the recommendation that, failing mediation, parents would be denied access to legal remedy on behalf of their child with a disability. *Suspension of ADA Requirements*: ADA already provides exemptions for undue hardship. More importantly, implementation of this recommendation would negate the entire statute because any entity could hide behind the “fiscal capacity” clause. *Extension of Timelines for Compliance*: . . . Accessibility requirements are not new. If communities are calling for more flexible implementation, it is already written in the law. ADA specifically states that no community can be forced to make changes which would impose an undue hardship. Further adjustments to the law are not necessary. *Conclusion*: Enabling people with disabilities to move from welfare to employment, from isolation to active participation in their communities will profit governments, businesses, families, and taxpayers.

Suzanne Butler, Staff Attorney
Advocacy Center for the Elderly and
Disabled
210 O'Keefe Avenue, Suite 700
New Orleans, LA 70112

ADA / IDEA—We were surprised to see these laws covered in your report, as the Unfunded Mandates Reform Act did not apply to civil rights laws. . . . Nonetheless, we feel the need to respond. . . . **IDEA**: Altering the funding scheme is no answer to fraudulent labeling of children as disabled. Basing the funding on the number of disabled children in a given school system is precise and fair. . . . school districts are not prohibited from commingling IDEA funds with other sources of funding, such as state and local funding. Yet, most local educational authorities believe, and act on the belief, that only IDEA funds may be used for special educational programs. In the experience of this agency, children who should be suspected of having a disability are not classified timely and services are not provided--as a cost savings measure. . . . in 1992 ACED brought a class action lawsuit . . . through a consent decree, school districts were prohibited from using "waiting lists" for the purpose of delaying evaluations. Such practices still occur . . . local education agency refusals to evaluate children and to provide IDEA services ultimately result in a greater harm . . . we all agree that school systems are in need of additional funding to provide services. . . . We disagree that the Act should be amended to relax some of the most costly requirements if federal funding is not increased. IDEA funding is . . . a voluntary program. States agree to meet certain standards when they take the funding. . . . It has been our experience that many school districts regularly and willfully violate the procedural mandates of the IDEA and its implementing regulations. . . . The LA State Department of Education . . . has been relatively ineffective in enforcing IDEA compliance . . . even where violations have been acknowledged by the state and continue unabated. . . . Further, uniform procedures for compliance with the IDEA are the best method of ensuring that the rights of all children with disabilities are uniformly protected. . . . These procedural safeguards should not be regarded as a federally imposed undue burden, as they currently serve as a gauge for determining compliance with other "unfunded" federal mandates, such as the Equal Protection and Due Process clauses of the U.S. Constitution and Sec. 504 of the Rehabilitation Act of 1973. We strongly disagree with the recommendation to defer implementation decisions to the state and local governments. The predecessor of the IDEA, the Education for All Handicapped Children Act (EAHCA) of 1975 was passed to address the problem of disabled students being denied access to appropriate educational services. . . . In 1996, . . . too many students with disabilities continue to be excluded from school or denied a free appropriate public education. . . . Throughout LA, school systems have not in the past fully accepted, and do not at this time . . . fully accept the responsibility of properly and appropriately educating all students with disabilities. . . . School systems continually demonstrate that their primary concern is not the education of all students with disabilities, but only the education of students with disabilities who

education of all students with disabilities, but only the education of students with disabilities who easily fit into the pre-designed programs and superficial "paper" compliance with requirements for individualized planning and programming. . . . Local and state governments may make the argument that they could provide more services, more cost effectively, if they were not burdened by federal standards or regulations. Most likely without federal regulations or mandates education costs . . . would go down, but this would be because the amount and quality of educational services . . . would decline. Today, only through active advocacy can many parents coerce or compel school systems to meet their present obligations. . . . Many school systems blatantly ignore and disregard the current federal law and refuse to work with parents, thus exposing themselves to due process proceedings and/or litigation. . . . Since school systems traditionally have had a great amount of autonomy in setting up educational programs, there is a general arrogance on their part about creating appropriate educational plans. . . . If school systems are to have more control over special education they need to change their attitude toward special education students. . . . If school systems worked with parents and provided all students with disabilities appropriate educational programs, implemented by trained and knowledgeable teachers, then maybe they would be in a position to argue that they, not the federal government, can best formulate educational decisions for students with disabilities. However, as long as the same conditions which existed in 1975 [exist], the federal government should continue to set standards and mandates for local and state governments. . . . Requiring formal alternative dispute resolution prior to using the due process procedures will only add costs to IDEA. . . . It would be absurd to require parties to mediate when it is clearly futile. We also strongly disagree with the recommendation to eliminate the private right of action. Leaving enforcement of IDEA to government bureaucracies will be either far more expensive than private right of action (assuming the government actually tries to enforce the law) or completely ineffective, gutting the law in practice. Private right of action is a narrowly-defined and tailored enforcement mechanism. *ADA*: . . . Modification of deadlines and requirements in the ADA to reflect budget constraints is an unnecessary compromise of civil rights for people with disabilities. We strongly oppose the suggestion that ADA requirements should be temporarily or permanently suspended, or made voluntary. Having failed to spread compliance costs over the past 20 years (since Section 504 was passed), these governments are not decrying the hardship that immediate compliance with now-past deadlines would impose. Flexibility and reasonableness are already provided by the Act. Current regulations provide flexibility to governments by allowing them to demonstrate undue financial and administrative

burden as justification for not meeting deadlines. If a government's reasons for not meeting deadlines are legitimate, the 'undue burden' defense enables it to negotiate later compliance deadlines. . . . ACIR's recommendations simply justify further discrimination against these individuals. It is analogous to recommending legislation to delay, or quality the right of women to vote, or the rights of non-whites to vote, ride public transportation, attend the school of their choice, or eat in the restaurant of their choice, due to budget constraints . . . elimination of a private cause of action would greatly minimize ADA protection, and would entail inefficient, expensive, and intrusive federal supervision of state and local governments. The protection of fundamental civil rights must not be entrusted to any single person, agency, or even branch of government.

254 Robert L. White, Director
NECA Government Affairs
National Electrical Contractors Association
3 Bethesda Metro Center
Suite 1100
Bethesda, MD 20814

Davis-Bacon—Our concern is that ACIR's recommendation is not only counter-productive, but is about as far from the concept of an "unfunded mandate" as can exist. Davis-Bacon does not come into play unless or until there IS federal funding. It's imposition is inherently tied to the federal funds being made available. . . . Furthermore, the essence of the reason for the existence of the Davis-Bacon Act is to protect the workers and the economy of the locale in which the covered project is taking place. Certainly the idea of state and local governments short-circuiting this law is like watching someone shoot themselves in the foot with all due deliberation. We have independent academic studies which show dramatically the economic benefits of Davis-Bacon to state and local economies, both in terms of actual savings on construction costs and in terms of maintaining a healthy, productive tax base in a locality. . . . We urge you to reconsider your recommendation on the Davis-Bacon Act and to eliminate it from your final report.

Terry G. Bumpers
Director
National Alliance for Fair Contracting
1750 New York Ave., NW, Suite 240
Washington, DC 20006

Davis-Bacon— . . . While our Contractors Coalition for Davis-Bacon Reform has proposed long overdue changes to the Act, at no time have we, or would we, support undercutting the principles upon which Davis-Bacon and its Related Acts are based. That principle provides for maintaining locally prevailing wages and benefit standards. Our concerns are the following: (1) Davis-Bacon and its Related Acts are laws that require the establishment of prevailing rates of pay for four classifications of construction services. . . there is not a single credible study in existence to prove the cost of the Davis-Bacon Act, because productivity in construction cannot be measured with any degree of accuracy . . . productivity along with wage rates determine final labor costs of construction projects, not just low wages. . . . (2) the Davis-Bacon Act encourages employers to contribute to training programs and to provide health insurance and pension to workers by virtue of these costs being a part of the prevailing rates in many areas. Repeal or revision of the Act will force our employers to discontinue contributing approximately \$500 million annually to privately funded training programs as they will be forced to join the inevitable 'race to the bottom' in a cost cutting frenzy. Additionally, privately funded health care and pension plans will be discontinued due to our competitors not providing these benefits. . . . The impact of your proposal would be to undercut local wages and benefit standards so that non-local firms paying lower wages and providing fewer or no benefits could under bid local firms for local projects. . . . (3) It is our opinion that the Act is, in reality, a federal requirement to honor local prevailing construction standards, which is no different than prevailing building codes imposed on states and municipalities as a condition of receiving federal funds. After all, when the Federal government is providing a majority or all of the funding for a construction project, it could hardly be deemed an unfunded mandate. . . . (4) . . . your recommendation that Davis-Bacon coverage should begin when the federal portion of the funding reaches 50% of project costs is tantamount to repealing an Act that we are attempting to reform. If your recommendation were adopted, virtually all highway, bridge, and wastewater treatment projects would not be covered by the Act because states would divide federal funds among various projects to insure that the federal portion would never reach 50%. Conclusion: we are requesting that you withdraw and reassess your recommendation regarding Davis-Bacon Related Acts and, instead, consider lending your support for constructive labor-management reform proposals, HR2472 and S. 141 which our Coalition has endorsed. These two bills truly reflect the position of the construction industry on the Davis-Bacon Act . . . it is somewhat surprising and disappointing to see an organization of states and local officials proposing harsh modifications to a federal law designed to support state and local wage, benefit, and training standards

256 Hugh T. Prickett, Ed.D.
Superintendent
Mississippi Department of Education, Office
of Deputy Superintendent, Mississippi
School for the Deaf
1253 Eastover Drive
Jackson, MS 39211

ADA / IDEA—We are writing in support of ADA and IDEA. Both of these Acts have done far more good for individuals with disabilities than any legislation passed in the history of this nation. . . . We suggest that both these Acts are not only “fair” to our citizens with disabilities but that they are morally and economically sound pieces of legislation. They are only “troublesome” to individuals who wish to keep our citizens with disabilities “out of sight” and “out of mind.” . . . These Acts have “leveled the playing field” and made it possible for persons with disabilities to compete fairly with their non-disabled peers. Individuals who previously were totally dependent upon government monetary support for their livelihood are now, in many instances, able to become fully self supporting citizens of our society. We urge you to retain ADA and IDEA in their present form.

257 Patrick J. Obermire
Denise Z. Obermire
107 John Road
Chehalis, WA 98532

ADA / IDEA—[Modified Comment #57 or #154] We support full implementation of IDEA and ADA by the national, state, and all local governments. We, of course, have a very personal concern regarding this because our seven year old daughter is deaf. These Acts have supported her to receive an equal and fair education as hearing children do in the public school system. We are afraid to even think about what her future holds without the support of IDEA and ADA. Please, for our daughter and for the sake of all Americans supported by IDEA and ADA, do not condense or eliminate these Acts.

258 Paul Fagan
Executive Director
Junction Five-O-Five
4410 College Main
Bryan, TX 77801

ADA / IDEA—I am in support of looking at the role Federal mandates have on Intergovernmental Relations. I was surprised that you have included IDEA and ADA in your report and that your recommendations would weaken both laws. It is disingenuous in an era of a shrinking work force, tension in the nation over division because of race, gender, and disability, and the drive to streamline government that you would consider weakening the provisions of these laws. Our best investment is an investment in our human resources. . . . I hope you will recommend compliance with these laws. . . .

Lincoln Loehr
11500 W. Oakmont Drive
Mukilteo, WA 98275-4871

CWA—My main concern is that [the ACIR report] misses the opportunity to inject better science into the process to determine what is or isn't needed. I say this from the perspective of an Oceanographer who has been involved for the last 23 years on sewage related matters, both from the oceanographic research side and the legislative and regulatory implementation side. The ACIR should emphasize that the secondary treatment mandate is no longer necessary to follow for discharges to marine or estuarine waters. The tools are in place now to make case by case judgments Congress asked the National Research Council (NRC) of the National Academy of Sciences to evaluate wastewater management in coastal urban areas. . . . It recommended use of an integrated coastal management approach which evaluates where the problems are and allows resources to be prioritized and focused to address the problems. . . . In the state of Washington, about 10 years ago, . . . We emphasized that based on our scientific understanding of the dynamics of Puget Sound that secondary treatment was not necessary for all of the Puget Sound discharges, while a site-specific basis it could be beneficial for some. Sadly, we were disregarded by our state legislature, and the costly upgrades are now complete. However, it is not a dead issue, because there will be future growth and new capacity will be required. The federal funds for this new capacity will not be available, which should give us reason to look closer at how to most cost effectively provide for both needed treatment and environmental protection. . . . In what may seem to be a counter-intuitive position, I can describe situations in which biological resources of significance were diminished following implementation of advanced waste treatment systems. . . . The advanced waste treatment systems decreased the release of suspended solids. Suspended solids from municipal treatment facilities are particulate organic carbon. Particulate organic carbon actually plays an important role in marine food webs. . . . In summary, the focus of the ACIR should be to emphasize the use of good science in guiding regulatory policy. In the case of the CWA, there is an excellent opportunity to use good science by incorporating the ideas developed by the NRC which were developed in response to congressional request. Use it!

Krista Albrecht, OTS
Linda Sabo, OTS

[No formal address provided; but, letter says they are students at Quinnipiac College, Hamden, CT.]

ADA / IDEA—This letter comes in reference to the article, “A Price Tag on Civil Rights?”, presented in the February 29, 1996 issue of OT Week. We are two Occupational Therapy (OT) students . . . who were moved to comment on the changes proposed for ADA and IDEA. . . . We are concerned about how the changes will impact the unalienable rights of the disabled. We agree with Mark Smith, Justice For All, statement that “ADA and IDEA are civil rights legislation” With healthcare taking the direction of today, these acts provide a great source of funding. To lose this funding (either federal or state) could greatly impair the functioning of the disabled. We also feel that ADA and IDEA do need to be enforced legally. . . . These acts have mainstreamed disabled people away from the segmented world to be able to function within society. To prohibit people from individually suing under ADA and IDEA is a weakening of their unalienable rights. By allowing individuals to sue under these acts, we enforce a disabled person’s rights.

261 Gary W. Henrie (cont.)

ADA: Requiring litigation to be brought by Attorney General is asking for ADA not to be enforced. DOJ will never have resources to enforce ADA. Recommendations should focus on resolution of ambiguous language; not reduction of enforcement. Each agency is better able to respond to needs of the disabled as they manifest in agency's domain.

262 Mike Oxford, Director
Topeka Independent Living Resource
Center
501 SW Jackson Street, Suite 100
Topeka, KS 66603-3300

ADA—Civil rights are inalienable and are not subject to cost/benefit analysis. Challenge to find one city that has spent more than 2% of its total operating budget on ADA compliance. Cities and schools have taken the federal funds for years and have failed to meet their contractual obligations to accommodate the needs of people with disabilities. Philadelphia has received substantial federal funding over the years while failing to even attempt to comply with the ADA or Sect. 504. In a civilized society we are supposed to settle our differences in court. Many schools and cities are working in good faith to comply and should be applauded.

263 Patricia K. Rogers
11040 N Maple Street
Hayden, ID 83835

Metric—Reversing or delaying the process just adds to the confusion and resistance and will do us no good in the long run. Conversion costs are incorporated into our normal costs of procurement, operations, and training. Really embarrassing that we have not completed our metric conversion in time for the Olympics next summer.

264 Sidney H. Morris
9892 Ranger Rd
Fairfax, VA 22030

ADA/IDEA—Delay in reauthorization and funding of these two laws is unconscionable. It is in your power to put a stop to the further victimization of innocent children and their families.

265 Don E. Hyslop, President
Cal-Diego Paralyzed Veterans Association
3350 La Jolla Village Drive, #1A-118,
San Diego, CA 92161

ADA—No one should be denied the right to sue for discrimination. Not only is this a basic right, but it also relieves some of the pressure on the already swamped Dept. of Justice. Also, ADA contains an "undue financial burden" defense.

266 Patricia Ostenson, Program Coordinator
Bloedel Reserve
7323 NE Dolphin Drive
Bainbridge Island, WA 98110

ADA—Decide that all law suits will not go to court first, but will be referred to a local agency advocating for persons with disabilities for a list of suggestions on how to solve the problem rather than litigate it.

ADA/IDEA—[Several allusions to disabled and civil rights]

Gwen Wheelock
12406 Winding Lane
Bowie, MD 20715

ADA—Please don't do away with ADA.

Sue Siemans
1602 S Church Street, #1
Rockport, TX 78382

Metric/Drug & Alcohol/ADA/CAA/Davis-Bacon—Metric: Recommendation is unfounded based on recent passage of National Highway System Designation Act of 1995. CT DOT decided to actively pursue metric conversion because of the tremendous progress to date with construction activities. Counterproductive and creates inefficient design process to drop metric conversion at this late date. **Drug & Alcohol:** Do not concur with this recommendation. Given the financial constraints of many state and local govt., it is not certain that they will allocate funds to adequately ensure that their drivers are not a threat to public safety if such mandates are repealed. Situation could pose threat to public safety and increase state, municipal and taxpayers liability for claims resulting from accidents involving such employees. **ADA:** Need for federal government to consolidate and streamline various administration functions associated with ADA and to provide additional funding to comply with Act. ACIR recommendations address the Department's financial and administrative issues with respect to the implementation of the act. The cost of ADA paratransit services exceeds the total federal operating assistance by 100%. This one mandate costs more money than was ever available for operating assistance from the Federal government. CT DOT strongly supports recommendation that a single federal ADA enforcement and assistance agency be designated as a point of contact for all enforcement, technical assistance and legal matters. Also recommend that a formal waiver process to modify federal legal standards be developed. **CAA:** Concur with recommendation. **Davis-Bacon:** Recommendation has little impact on CT projects. Amending requirements on smaller projects would remove a burdensome reporting and record keeping requirement and would allow smaller independent businesses and opportunity to compete for public work. Project sizes should be the sole criteria for determining whether Davis-Bacon applies to a project.

William H. Messner
Policy and Planning Admin.
CT Dept of Transportation
2800 Berlin Turnpike
PO Box 317546
Newington, CT 06131-7546

267

268

269

- 270** Diane S. Sakumoto
98-1461 #4 Kamohao Street
Pearl City, HI 96782
- 271** Dolores Gonzalez
7100 Bluff Springs Rd #1204
Austin, TX 78744
- 272** Michele Williams
Executive Director, Co-Founder
Advocates for Children's Education
8004 SW 198 Terrace
Miami, FL 33189
- 273** Chris Condo
Condo & Masterman, P.C.
1921 Gallows Rd, Suite 830
Vienna, VA 22182
- 274** Christine Bonacum
No Address
- ADA**—Please table “local option law” suggestion and work instead to keep ADA in full force and effect as a national and mandatory law.
- ADA/IDEA**—Job Accommodations Network, a free resource sponsored by Presidents Committee for Employment of People with Disabilities, reports 80% of accommodations are easily accomplished and cost less than \$500. Outreach for availability of free technical assistance was and continues to be widespread. Disability community will not be against increased technical assistance but to say that it has not been readily available to state and local governments is incorrect. Although the federal government should make more available grants for retrofitting existing facilities, many communities have been successfully using Community Block Grants for removing barriers for almost 15 years. To limit legal action is to take away an inherent right of individuals and would not be allowed for other minority groups.
- ADA/IDEA**—Sometimes nothing but an individual suit stops the abuse. Florida now graduates 35% of its special education students to unemployment—clearly there are violations of IDEA flagrantly being carried out. If there were no recourse to individual suits under IDEA and ADA, loss of federal funding to schools that receive federal funding would be the only recourse we have to correct these abuses. The thousand plus cases we have in our files right now document how many school personnel, administrators, school boards, do not care to follow IDEA or ADA unless it is “convenient” or free. If suits are removed as part of the rights under the IDEA, school districts will soon see federal funding being removed by angry parents who had no other options. If the right to individual suits are removed from ADA, anyone who cares to begin or continue discrimination will be free to do so.
- FMLA/Equal Pay Act**—Fear that if public employers do not have to comply, private companies will quickly follow.
- ADA/IDEA**—Need IDEA for a good education, ADA to speak for our rights and Medicaid to pay for our medical needs.

275

T.B. McDonald
Energy/Tax Issues Manager
Mobil Oil Corporation
3225 Gallows Road
Fairfax, VA 22037-0001

General/CAA—Applaud ACIR on its efforts to review the role of federal mandates in IG relations and in their recommendations. Mobil is strong supporter of initiatives aimed at providing relief from federal mandates which impose burdensome requirements on state and local governments without providing commensurate benefits. ACIR should assess the fleet provisions of the Energy Policy Act of 1992, which requires state and municipal and private fleets to annually purchase an increasing number of costly alternative fueled vehicles. Impose provisions without consideration of economic impacts. Energy Policy Act unfunded fleet mandates meet all criteria of ACIR. [Explanation follows]

276

Sue DiGiampaolo, Executive Director
The Arc, Wichita County, Inc
3307 Buchanan
Wichita Falls, TX 76308

IDEA/ADA—While unfunded mandates are admittedly a problem, these two laws should not be included with those addressed.

277

Sarah R. Allen
Stephen F. Palevitz
Staff Attorneys
Arizona Center for Disability Law
3839 North 3rd St., Suite 209
Phoenix, AZ 85012

ADA—(State and local) failure to comply with Sect. 504 and their subsequent failure to take seriously the implementation timetables of ADA are not valid excuses for suspension or postponement of the reasonable requirements. ADA did not require immediate compliance. It provided for a process of evaluation, prioritization and incremental implementation. There are numerous provisions for flexibility which take into consideration potential financial impact. ADA provides that public entities adopt internal grievance procedures which would allow them to resolve complaints at the lowest level with minimal cost. More federal funding is needed for federal enforcement agencies such as DOJ to investigate the many complaints which have been filed. Creating one or designating one agency would cost money and sacrifice efficiency and expertise each enforcement agency has. These agencies are understaffed and underfunded to respond to the many technical assistance and compliance requests they receive.

278 Arne Jorgensen
29 Brady Blvd. #3
Lake Hopatcong, NJ 07849

ADA/IDEA—IDEA: Lack of increase in funding should not exempt voluntary states from adhering to requirements. To allow only state or federal agencies to make challenges assumes that such agencies are more appropriate guarantors of individual rights than individuals. ADA: Legal costs involved in defining supposedly ambiguous term can be lessened by encouraging better communication between states and localities and ADA enforcement agencies. Increased funding could easily be achieved given a reorientation of federal priorities. ADA deadlines and requirements cannot be modified. Do not create one enforcement agency; merely avoiding duplication of effort by agencies is sufficient. Disagree that legal actions against state and local governments should be limited to those brought by the federal government.

279 Toby M. Kravet, CRC, Secretary-Treasurer
Hawaii Rehabilitation Counseling
Association
P.O. Box 4385
Honolulu, Hawaii 96812

ADA/IDEA—Should not be prerogative of state and local governments to prioritize compliance upon their financial situations. To make IDEA and ADA “local option” laws is to reduce disabled to second class citizens.

280 Barbara Knowlen
Barrier Breakers
1106 Irving Ave. N.
Minneapolis, MN 55411

ADA/IDEA—Allowing communities to comply with access requirements voluntarily, when they can afford to, is like Lincoln asking the plantation owners to free the slaves voluntarily, when they can afford to.

281 Evelyn A. Timmins
2120 Lundy Lane
Friendswood, TX 77546

ADA/IDEA/FMLA—ADA: Increasing funding for compliance or modifying some deadlines would probably by a realistic expectation, but the private sector is never asked if various mandates fit in their budget either. (ADA) seems to be poor planning and should not be overlooked in any new rulings issued by our government. this is a law for people; why should we have to wait until the federal government feels we have a valid complaint? **IDEA:** Federal funding probably needs to be increased by those numbers should be looked at initially, not in retrospect at more cost to the taxpayer. Allowing only state or federal government to sue would give idea that they do not have to comply as they are the only ones who can sue. **FMLA:** We hear that government is not really people, but proposed changes proves it.

- 291 **Mp. Montana**
737 Marshall Ave
St. Paul, MN 55104
ADA/IDEA—[See Letter #154]
- 292 **Patricia E. Cody**
3945 Lancaster Lane N, #301
Plymouth, MN 55441
ADA/IDEA—[See Letter #154]
- 293 **Lori Lei Jensen**
1351 Hampshire Ave S
St. Paul, MN 55116
ADA/IDEA— [See Letter #154]
- 294 **Lisa Popp**
2727 Rhode Island Ave, S #209
St. Louis Park, MN 55426
ADA/IDEA— [See Letter #154]
- 295 **Gary A. Weousd**
2714 Russell Ave N
Minneapolis, MN 55411
ADA/IDEA—[See Letter #154]
- 296 **Maggie Wille**
235 Nathan Lane, #309
Plymouth, MN 55441
ADA/IDEA—[See Letter #154]
- 297 **Mildred C. Martin**
ADA/IDEA—[See Letter #57]
- 298 **Norma Gibbs**
ADA/IDEA --[See Letter #57]
- 299 **Helen E. Greenleaf**
ADA/IDEA—[See Letter #57]
- 300 **Henry Stomper**
ADA/IDEA— [See Letter #57]

#	NAME & ADDRESS	COMMENT TOPIC
301	Tiffany Caprarella 4416 La Crescenta Ave La Crestenta, CA 91214	ADA / IDEA/Boren/ESA —[Identical to Comment #57] <i>Personal Comment:</i> I am appalled that our government has so lost sight of what is important that it would commit such an injustice against its land and people. I am also in full support of Medicaid and the Endangered Species Act.
302	Jonathan Corres 4765 Caviu Place Colorado Springs, CO 80918	ADA / IDEA —[Identical to Comment #57]
303	Jean Stillwell 4765 Caviu Place Colorado Springs, CO 80918	ADA / IDEA —[Modified Comment #57]— <i>Personal Comment:</i> . . . These ACTS were signed into law for one purpose—to enable the least able-bodied an opportunity to LIVE as normal a life as possible. Any changes without total knowledge and cooperation of the full disabled community leads to MORE government distrust by those the laws were enacted to provide a modicum of protection to. This effort by [ACIR] thus charged, so far has met without our notification, and does so as a hostile political ploy. We deserve to be forewarned and to be included in any changes that affect us. Being disabled is not necessarily defined by BRAIN-dead. Many of us would prefer arbitration to legal action, so be aware, if legal action DOES occur it is because those employees and elected refuse to arbitrate in GOOD Faith!
304	No Edward L. Peterson address	ADA —[Blue postcard Comment #182]
305	Tim O' Hanlon (?) No address	ADA —[Blue postcard Comment #182]— <i>Personal Comment:</i> ADA gives disabled people a life worth living.
306	Karen Lake 23904 SE 24th Street Issaquah, WA 98029-9465	ADA —[Blue postcard Comment #182]— <i>Personal Comment:</i> Please don't stop a 'GOOD THING'. the country is just starting to come into compliance so that ALL people have equal access, equal opportunity.
307	Helen C. Roth 47 N. 200 E. Logan, UT 84321	ADA —[Blue postcard Comment #182]— <i>Personal Comment:</i> The "undue hardship" and "readily achievable" language already protects those who cannot afford to comply. This is a civil right issue.

- 308 Angelic Stone, Julie Mann, and Tom Kempf ADA—[Blue postcard Comment #182]
No address
- 309 Susan M. Strickland ADA—[Blue postcard Comment #182]— *Personal Comment*: The ADA does not cost the
5202 S. Tyler Street #A American public money—ADA saves money by allowing people with disabilities to be part of
Tacoma, WA 98409 American life.
- 310 Patrick C. Foley ADA—[Blue postcard Comment #182]— *Personal Comment*: If the Republicans will use the
19014 Corliss Ave N virtue they claim to have a lock on—“Common Sense” They will Realize this law is neither
Seattle, WA 98133 “unreasonable” nor and “undue hardship”—where have state and local governments been the
last 20+ years under 503/504?
- 311 Fred Chapman ADA—[Blue postcard Comment #182]— *Personal Comment*: Please do not weaken the
5029 18th NE ADA. Thank you.
Seattle, WA 98105
- 312 Stephanie Kirsch (?) ADA—[Blue postcard Comment #182]— *Personal Comment*: I really appreciate the help
No address ADA gives me. Attitudes still need work. The disabled can and do contribute!
- 313 Roxanne Hansen ADA—[2 Blue postcards Comment #182]— *Personal Comment*: [almost identical on both
& Coordinator cards] As a professional in higher education, I can attest to the success of ADA and our
314 Center for Disability Services Everett college’s ability to teach and graduate people with disabilities into the work force!
Community College
Everett, WA 98201
- 315 Dr. R. G. Cunningham ADA—[Blue postcard Comment #182]— *Personal Comment*: As a job developer—This
343 N. 74th Street [ADA] is a most essential tool.
Seattle, WA 98103-5025
- 316 Sheri Adams ADA—[Blue postcard Comment #182]— *Personal Comment*: “i HAVE rites two.”
624 77th Ave NE
Olympia, WA 98506

- 317 Ellen Crieftnut
No address
ADA—[Blue postcard Comment #182]—*Personal Comment*: Compromising the ADA will negatively [affect] all.
- 318 Dianne Grace
No address
ADA—[Blue postcard Comment #182]—*Personal Comment*: Without the ADA millions of people will become less independent. Eliminating the ADA is a step backwards for everyone.
- 319 M. Anne Verbon
6053 27th Ave. NE
Seattle, WA 98115-7111
ADA—[Blue postcard Comment #182]—*Personal Comment*: I have had MS for 30 years and spent part of that time in a wheel chair. There weren't even curb cuts then.
- 320 Kathy Nerl (?)
OSC Vocational Systems, Inc.
7500 212th Street SW #110
Edmonds, WA 98026
ADA—[Blue postcard Comment #182]—*Personal Comment*: I work closely with employers who state they need assistance and information but will accommodate!
- 321 Charles McManus
3035 NW 61st Street
Seattle, WA 98107-2560
ADA—[Blue postcard Comment #182]—*Personal Comment*: Keep up the Good Work. We need you. Thanks.
- 322 James V. Smith
1684 152nd Avenue NE
Bellevue, WA 98007-4278
ADA—[Blue postcard Comment #182]
- 323 Susan Grace
[No address]
ADA—[Blue postcard Comment #182]—*Personal Comment*: Inclusion not only makes sense, but it's good for all of us, including business.
- 324 Elizabeth Smith
Seattle WA voter
[No address]
ADA—[Blue postcard Comment #182]—*Personal Comment*: Please give this your thoughtful consideration! Thank you!
- 325 Deborah A. Livesey
2602 9th Ave W
Seattle, WA 98119
ADA—[Blue postcard Comment #182]—*Personal Comment*: Accommodations that work for disabled people, really work for everyone. They usually make business more open to all their customers.

326 Regina Bell
10616 61st Ave S
Seattle, WA 98178

ADA—[Blue postcard Comment #182]

327 Mitchel Turbin
225 11th Ave E
Seattle, WA 98102

ADA—[Blue postcard Comment #182]—*Personal Comment:* Disability rights are DECLINING under current legislative actions, with Vocational Rehabilitation, Medicaid, Food Stamp funding cuts. Any infringement on ADA will be the straw that breaks our back!

328 Josephine Bess
2121 26th Ave. S. Apt. #409
Seattle, WA 98144

ADA—[Blue postcard Comment #182]

329 Laurel Andrews
5443 Kirkwood Place North
Seattle, WA 98103-6241

ADA—[Blue postcard Comment #182]—*Personal Comment:* I recently represented Employees with Disabilities during a move to brand new headquarters. Many changes were made to accommodate us at little or no cost. [I work for the City of Seattle.]

330 Melissa Kurtz
[No address]

ADA—[Blue postcard Comment #182]

331 Stephanie Van Dyke
[No address]

ADA—[Blue postcard Comment #182]

332 Larry L. Petersen
Director
Seattle Central Community College,
Regional Education Center for Deaf
Students
Seattle, WA

ADA—[Blue postcard Comment #182]—*Personal Comment:* Please do not further disable already disabled individuals in this very country.

333 Caroline K. Wildflower
9728 3rd Ave NW
Seattle, WA 98117

ADA—[Blue postcard Comment #182]—*Personal Comment:* ADA makes the difference between people being able to be productive members of our community and needing to spend taxpayer dollars to “take care of” people who would rather take care of themselves.

- 334 Jim Lindley
4940 Ashram Lane NW
Olympia, WA 98502
ADA—[Blue postcard Comment #182]—*Personal Comment:* Civil rights are not “unfunded mandates,” they are the inalienable rights of all citizens. ADA is civil rights for people with disabilities.
- 335 William T. Burke
7735 57th NE
Seattle, WA 98115
ADA—[Blue postcard Comment #182]—*Personal Comment:* Major elements in the proposed compromise by the National Governors’ Conference are a threat to the well-being of the disabled.
- 336 Karen Fusco
10408 NW Seabeck Hwy.
Seabeck, WA 98380
ADA—[Blue postcard Comment #182]
- 337 No name
[No address]
ADA—[Blue postcard Comment #182]—*Personal Comment:* Keep programs and services accessible to person of disability.
- 338 Suzanne Myrene
310 Shady Lane
Wenatchee, WA 98801
ADA—[Blue postcard Comment #182]
- 339 Richard F. Starkey
2121 26th Ave
Center Park #508
Seattle, WA 98144-4759
ADA—[Blue postcard Comment #182]—*Personal Comment:* Please retain the ADA as it exists and I will fill out and _____ ensuring my basic rights and create no hardships for others.
- 340 Doris J. Stiefel
[No address]
ADA—[Blue postcard Comment #182]—*Personal Comment:* It is essential to maintain and enforce the ADA as enacted.
- 341 Marshall Mitchell
NW 1620 Kenny
Pullman, WA 99163
ADA—[Blue postcard Comment #182]—*Personal Comment:* If cities would comply voluntarily the ADA would never have been needed. If individuals can’t sue, how will it be enforced.
- 342 Sarah Light
600 Black Lake Blvd
Olympia, WA 98502
ADA—I strongly urge you to retain the ADA as it exist. Ensuring my basic civil rights does not create hardships for others. Because of the ADA, future generations can always be part of the community.

Harry E. Payne, Jr.
Commissioner
North Carolina Department of Labor
4 West Edenton Street
Raleigh, NC 27601-1092

OSHA—does not agree with the recommendations regarding OSHA. Coverage has not been imposed without the State's consent and private employers who must comply with the law would insist that it is hypocritical to have a law that is not enforced in both the private and public sector. To allow each state to set their own health and safety standards as ACIR suggests will not promote the general welfare of all public employees in the country. The general welfare of its citizens is of such national concern that it is addressed by the U.S. Constitution. . . . While there may not be specific federal funding aid to state and local governments to help them comply with the requirements of the OSHA Act, there are indirect benefits. Funding is provided to states for administering the Act. Most states do not have the resources, either financially or available technical expertise to set their own health and safety standards as ACIR suggested. Standards are developed by federal OSHA at the national level which can be adopted by the states. The states can also amend the national standards to address unique state situations. . . . All employers, whether public or private, should have the responsibility of the costs associated with protecting their own employees. This is only fair, and taxpayers see this as a prudent use of public funds. . . . government instrumentalities were given extended time frames to come into compliance with the law and funds were provided to assist in this effort. It has only been since 1992 that penalties were imposed against the public sector in NC. . . . The fact that most governmental entities are committed to the goal of protecting the well-being of their employees has lessened any potential intergovernmental tension level. . . . There is also an awareness of the fact that a financial investment up front will result in savings for the governmental entity in the long run in the form of reduced workers' compensation pay outs. . . . [The letter discusses how the requirements do not fit the ACIR criteria for being a mandate of significant concern (e.g. the letter says the OSHA requirements do not force states to expend substantial amounts of own resources; do not abridge historical powers of state and local governments; do not impose requirements that are difficult to implement; and are not subject to widespread objections.) The recommendation [on OSHA] is extremely odd in consideration of the fact that there appears to be a general consensus that public employees in all states, including federal OSHA states, should be covered.

344 Joanne Marie Roll
3841 Osceola Street
Denver, CO 80212

FMLA—FMLA should remain a federal mandate, binding state and local governments [because] . . . Children are entitled to the continued presence of a parent when they are newborn, newly adopted, or seriously ill; . . . State and local governments need to set an example. . . . Exempting state and local governments from FMLA would be discriminatory against--single parents, parents, women who cannot abort because of religious reasons; and, Prior to the passage of FMLA state and local governments did not uniformly provide for family leave. [The letter includes a personal experience with the state of Colorado that, in part, says: "I was told if I left my job to take care of my son, in 1985, that I would never work again for the state of Colorado."]

345 Carolyn Newcombe
Executive Director
Disabilities Network of Eastern CT, Inc.
107 Route 32
North Franklin, CT 06254

ADA / IDEA—**ADA**: When ADA was passed . . . it was widely recognized . . . as civil rights legislation. . . . Now some are considering it an "unfunded mandate." What changed in six years? . . . There are several misconceptions regarding the ADA, one of them being implementation is costly to state and local governments. The ADA doesn't require a building to be retrofitted but only that barrier removals take place to existing structures when renovations occurs. The ADA also encourages creative solutions when buildings aren't accessible such as moving a program to an accessible location. The Disabilities Network disagrees with efforts to prevent individuals from filing legal action against state and local government agencies to enforce the ADA. **IDEA**: The Disabilities Network is very disturbed at the prospect of having IDEA substantially revised. . . . IDEA sets guidelines and standards for educating individuals with disabilities. We receive a number of calls each year requesting assistance in the process of integrating students with disabilities into the school systems. IDEA and its predecessors were never fully funded. This doesn't mean the goals IDEA strives for aren't worthy of being obtained. If the goal of education is to ensure all students become independent and productive citizens, then IDEA is necessary as it is written in its present form.

346 Janet Hanson, Teacher,
Austin Middle School
[No address]

ADA / IDEA—[Form Letter #57]

347 Susan Kochaniuk, Math Teacher and Parent
[No address]

ADA / IDEA—[Form letter #57]

- 348 Jana Daniels, Classroom Teacher
[No address] ADA / IDEA—[Form letter #57]
- 349 Jearly Simpson, Counselor Clerk
[No address] ADA / IDEA—[Form letter #57]
- 350 Tami Kraft, Teacher
[No address] ADA / IDEA—[Form letter #57]

#	NAME & ADDRESS	COMMENT TOPIC
351	Annette Walker, Classroom Teacher [No address]	ADA / IDEA—[Form Letter #57]
352	Janet Bunyan, Teacher [No address]	ADA / IDEA—[Form Letter #57]
353	Richard Jester, Teacher [No address]	ADA / IDEA—[Form Letter #57]
354	Kathleen Guerrero Teacher, Austin Middle School [No address]	ADA / IDEA—[Form Letter #57]
355	Ramona Griffin Teacher, Austin Middle School [No address]	ADA / IDEA—[Form Letter #57]
356	Cary Speer, Teacher [No address]	ADA / IDEA—[Form Letter #57]
357	Marianne and Charles Kindya 19 Winthrop Road Bethel, CT 06801	IDEA—[Handwritten Form Letter #123]

358 Louise Wilson
733 Hawthorne NE
Grand Rapids, MI 49503

ADA—[No specific mandate referenced but the letter concerns treatment of a person with cerebral palsy.] Now, it turns out that because Medicaid paid for his care, and it was administered by a state agency . . . even though [the state employees] clearly violated state and federal laws in the treatment of a developmentally disabled person, nobody will take the case because you may change the law and take away the right to sue any of these people, and that this will be retroactive. Perhaps you are under the misguided notion that people who work for the state must all be wonderful people. . . . they have strong disincentives to assist their clients. I would ask why any agency which purports to assist the disabled should allow or even want their employees to be set up as god-like figures, above the scope of the law.

359 Kristen Willison
3717 Devonshire Lane
Bloomington, IN 47408

ADA / IDEA—My daughter has cerebral palsy, spastic quadraparesis and is eighteen years old. . . . Without all this groundbreaking legislation, my daughter would not have the opportunities she has experienced. PL 94-142 gave her the right to be “mainstreamed” in a gifted classroom. . . . We have lived in different parts of the USA. Accessibility is of paramount importance for independence, dignity, and the ability to find employment. Bloomington, IN is far behind other areas of the country. Left to their own opinions, they would not make the community accessible. People with disabilities need to be able to know they can travel as others do and have the same opportunities for work and leisure.

360 Dean R. Kleckner, President
American Farm Bureau Federation
225 Touhy Ave
Park Ridge, IL 60068

General—The Farm Bureau vigorously supported the Unfunded Mandates Reform Act. . . . We would have preferred to begin rolling back federal mandates, rather than just study them. We hoped that the reporting requirements [in the Act] would further the debate on unfunded federal mandates. This first report . . . indicates that these reports will contribute to the ongoing debate over unfunded mandates. We applaud the Commission for this report. The debate over federal mandates ultimately comes down to which level of government decides spending priorities for the limited amount of money that state and local governments have. . . . The six common issues . . . are ones our members often face when working with state and local governments. We are particularly pleased that [ACIR] focused on issue number five, “Inability of very small local governments to meet mandate standards and timetables.” . . . Diverting even small amounts of money to unfunded federal mandates means that other pressing local needs go unmet. [The letter expresses support for ACIR’s criteria for selecting mandates of significant concerns and commented especially on the ones related to “inadequate scientific and economic basis” and “lacking of practical value.” The comment is made that even including these two items in the criteria . . . “is a clear indication of how fundamentally flawed many federal mandates have become.” . . . The only shortcoming of the report is that the recommendations for change were not stronger. [ACIR] should push to have more mandates repealed. Any mandates that remain should provide the desired outcome and allow state and local governments total flexibility to achieve that outcome. We applaud your first report on unfunded mandates and encourage you to review [the] more than 200 mandates and make a full report to the public.

361 Henrietta R. Schmitt
Vance P. Sexton
5622 120th St. SW
Tacoma, WA 98499

ADA / IDEA—[Slightly modified Form Letter #57]

362 Kathy Glover
Registered Nurse
3 Hall Court
Brookville OH 45309

ADA / IDEA—[Telephone Comment.] She is a nurse especially concerned with persons with epilepsy. ADA is a real need in our culture. ADA protects disabled persons so they can be productive and not be a burden on society. Also, support IDEA for same reasons.

363

Jack R. Gilstrap
American Public Transit Association
1201 New York Ave, NW
Washington, DC 20005

ADA/Drug & Alcohol/CAA—Of particular concern to the transit industry is that the full burdens of just two recent federal mandates—ADA and Drug & Alcohol—are occurring at the same time that Congress is significantly reducing federal transit funding. . . . In short, the burdens associated with federal mandates are increasing even as the associated federal operating funding is decreasing. We generally agree with ACIR's identification and discussion of common problems federal mandates can cause. . . . [We note] that the . . . Federal Transit Administration has been quite innovative in undertaking a number of administrative initiatives to make its programs more flexible and less burdensome. Unfortunately, in many cases the underlying federal statutes permit little or no flexibility on the part of federal agencies responsible for implementing and managing the programs. [The letter enclosed a regulatory reform report submitted by APTA to Congress and the Executive Branch agencies.] Two points from the regulatory reform report are mentioned in the letter: a) "While APTA supports the goals of ADA, and has not recommended significant changes to it but notes that preliminary estimates indicate that total ADA costs exceed \$1.4 billion annually, including some \$1.1 billion in paratransit costs. . . . The final implementation of paratransit plans—due January 1997--will increase cost even more. b) APTA supports the goals embodied in the Clean Air Act, and does not propose significant changes, but, notes that the costs associated with engine emissions equipment . . . are not inconsequential. A study done in 1990 by a large Western bus operator estimated that the additional cost of equipping the nation's public transit fleet with such equipment would be approximately \$98 million annually. . . . In short, federal mandates add more than \$1.5 billion a year to transit agency budgets. Without federal aid to compensate for these costs, transit agencies must raise fares or reduce services, making it harder to attract customers and jeopardizing transit's contribution to economic development, improved quality of life in our communities, and efficient, productive uses of transportation resources.

364

Judith Baker
4613 LaMaida Street
Sherman Oaks, CA 91403

FMLA—I strongly oppose the recommendations of this report [regarding FMLA.] The FMLA does not impose administrative and financial burdens on state and local employers. It helps strengthen families and protects the economy by keeping people off welfare. The FMLA had and has broad bi-partisan support. . . . This [the needs of families] is the case for people who work for state and local governments as well as those who work for other agencies.

365 Agnes B. Levine-Oliver
202 Ridge Ave
Baltimore, MD 21286

ADA / IDEA—I am a parent of a 9 year old handicapped child . . . it is a sorry state of affairs to even be considering scaling back on these [ADA / IDEA] fundamental rights. Rights laws such as ADA and IDEA are specifically excluded from examination by ACIR. . . . Not doing so [not excluding from the study] is an abuse of power and taxpayers dollars when supporting political opinions of its members rather than addressing the issues the commission was created to address. There is no such thing as ADA and IDEA creating undue burdens on the state. Rather, they help the states better serve a select population that are continuously threatened to loose services. We need laws like ADA and IDEA to stay intact. . . .

366 Renee Romain
6039 Covington Terrace
Mtha, MN 55345

ADA / IDEA—[Form Letter #154]

367 Robert B. Belton
2670 Stowe Court
Charlottesville, VA 22901

General / CAA / CWA—While I find many of your possible recommendations laudable, I am in disagreement with your overall sense that so many of the regulatory powers now granted to the federal government would be better carried out by being parceled out to the states. My intent . . . is to point out that the federal government has a different approach, by definition, to such legislative mandates as the CWA and CAA. Federal priorities are different from those of the states, with concerns that often cross jurisdictional boundaries. . . . I am concerned that the policies you espouse would negate years of progress in the stewardship of our environment, and the people therein, in the name of less federal involvement in governance below the national level. Surely, the EPA, nor any agency at the federal, state, and local level, is sacrosanct, but our nation needs one, federal agency to administer laws pertaining to such border-neutral issues as clean air and clean water. I do not advocate “big” government, only wise use of centrally-controlled approaches when circumstances and our national needs virtually demand an overall, nationwide approach.

368 Nancy Ward
Chairperson
Self Advocates Becoming Empowered
805 S. Crouse Ave
Syracuse, NY 13244-2280

ADA / IDEA—[Same address as Letter # 59] The ADA and IDEA are not unfunded mandates. Before we had these laws, school districts were keeping children with disabilities from going to school, and older people with disabilities were not able to work or live in their own communities and make decisions for themselves because they were not given the opportunities that everyone else had. . . . Now we are getting people out of institutions and showing that people with disabilities can be taxpayers like everyone else. . . . This country was based on freedom of speech and the right to file a complaint or go to court when your rights are being violated. We strongly disagree with your recommendation that those rights should be limited just for people with disabilities. . . . Finally, we disagree with your recommendation that more time should be given for compliance with the ADA. We feel that five years is long enough, and we also feel that the “undue burden” part of Title II gives society enough leeway so that they are not forced to do things they cannot afford to do.

369 Kate Painter, et. al.
67 Mountain Avenue
Apartment A
Springfield, NJ 07081

ADA / IDEA—[This letter is from six people, in addition to the addressee. The other persons are from: Scranton, PA; Watertown, CT; New Milford, CT; Medford, NJ; Lake Hopatcong, NJ; and Oro Valley, Greater Tucson, AZ.] The letter says: “I support the ADA and IDEA. Do not weaken these civil rights laws.”

370 Dorothy Walt
[No address]

ADA—[Blue postcard Comment # 182] *Personal Comment:* Without the outcomes as a result of ADA, I would not be able to do my job or remain employed. Please retain ADA as it is!

371 Wendy David
[No address]

ADA—[Blue postcard Comment # 182]

372 Eric Francis, Editor
The Disability Rag
PO Box 145
Louisville, KY 40201-0145

ADA—[Blue postcard Comment # 182] *Personal Comment:* The U.S. has an unfortunate history of allowing short-term budget concerns to overrule long-term civil rights issues. Please don't fall into this trap.

373 Margaret Austin
1605 9th Street
Marysville, WA 98270-4616

ADA—[Blue postcard Comment # 182] *Personal Comment:* The ADA has given my daughter her “basic” right to enjoy all activities equal to her hearing peers.

374 Marguerite J. David
[No address]

ADA—[Blue postcard Comment # 182]

375 Roberta Beigh
[No address]

ADA—[Blue postcard Comment # 182] *Personal Comment*: In my connections with King County schools and special need students, I have found that the ADA is most important to the transition of these youth and the employees of our future. Please do not go backward. We've come so far!!

376 W. Robert Schultz, III, J.D.
Public Education Coordinator
Mike Ervin
Consultant
Access Living
310 South Peoria, Suite 201
Chicago, IL 60607

ADA / IDEA—ACIR draft report fails to respond to key questions Congress posed, and instead focuses on policy issues well outside of ACIR Congressional mandate. Draft report discusses the costs of mandates largely without examining their benefits. At recent Access Living meeting, 30 members of disability community uniformly denounced findings of ACIR report. Inappropriate for ACIR to recommend changes to these laws. Recommendations to eliminate private right of action and to reduce state and local government compliance obligations under these statutes would set back country's efforts to guarantee equal rights for citizens with disabilities. ADA and IDEA allow federal agencies to emphasize education and voluntary compliance as much as possible. Only way to achieve fairness for all that ADA painstakingly seeks is to let it work as it is intended to work. To change deadlines for curb cuts now is to declare all our requests for action unreasonable, no matter how focused or minute. Existing hardship channels of ADA are there to separate true claim from the frivolous. They are more than fair. If they are suddenly a burden, it reflects a lack of serious access priorities rather than a lack of funds.

377 Jerome Torczyner, B.S.E.E.
1061 Beachpark
Foster City, CA 94404

FMLA / ADA / IDEA—Report tries to gut or unempower and neuter very powers behind acts. We have had too many occurrences of government excluding itself from its own regulations. Don't throw out the baby ADA with bad bathwater because of resistance by a few. The rights to sue state and local governments is essential. Would we allow George Wallace to say school desegregation is a local issue? It is too often that these groups need suing. They ignore ADA requirements and continue on their merry ways. [Cites several examples of inaccessibility in various areas of California] Rather than gutting the ADA, there appears to be a need for local investigation by federal and state agencies. It is the local governments that ignore ADA or the Rehab Act and sections 503 and 504. The EEOC is also slow and deficient in ADA Title I cases.

378 Ms. Yadi D. Mark
Director of Government Relations
Paralyzed Veterans of America
Bayou-Gulf States Chapter
3650 18th Street
Metairie, Louisiana 70002

ADA—ACIR has no authority to review the ADA since the act applies only to unfunded mandates and not to civil rights legislation. Without the right to sue, ADA would not get enforced. ADA is a give and take legislation which takes into consideration “undue hardship”, reasonable accommodation” and “readily achievable”. Many issues must be decided on a “case by case basis”. Many states and local governments have not yet made the “good faith effort” to do evaluations or a transition plan to show how they will eventually comply. If public entities had complied with the requirements of the Rehabilitation Act, most of them would have met the ADA requirement and they would not be crying “unfunded mandate.” What is to guarantee that one federal agency will be successful at enforcing the ADA? A modification of some deadlines and requirements to Title II entities is wrong.

379 Patricia A. Stampler
Sommers, Schwartz, Silver & Schwartz
Professional Corp.
2000 Town Center, Suite 900
Southfield, Michigan 48075-1100

IDEA—Congress should allocate to the states more money to help meet the purposes and goals set forth in IDEA. IDEA’s funding and administrative laws must be maintained. It is critical to know that children with disabilities should be accorded the same rights and treatment irrespective of where they reside. It is only fair that when the schools have failed to follow the federal law, they should pay the family’s attorney fees in a manner similar to other civil rights laws mandating that violators pay attorney fees. It is neither fair nor economical to force the state or federal government to take over that role.

380 Mike Rairie
5106 W. Strong St.
Chicago, IL 60630

ADA / IDEA—[Form letter #57]

381 Tara Futie
22 Hillside Circle
Brookfield, CT 06804

ADA / IDEA—[Form letter 123]

Tom O. Sachs, AIA,
Chairman
Alexandria Commission on Persons with
Disabilities
Administration Unit No. 1
2525 Mt. Vernon Ave.
Alexandria, VA 22301

ADA / IDEA—IDEA: Extremely disappointing that IDEA typically receives only 8% funding from the federal government, rather than the 40% allowed by the legislation. We strongly support increasing the level of federal appropriations for IDEA to the maximum amount authorized. We are also aware that the federal government is unlikely to make such a funding commitment. IDEA allows each state to develop its own programs for providing education to all youngsters within certain guidelines. Withholding of federal funds is one way of providing incentive to the localities to comply with the requirements of the legislation. It is simpler and more effective than using the courts to monitor the implementation of the programs. IDEA is not a litigious law; In 1993, out of 3,227,563 students who were provided services under IDEA in states with available data, only 654 (appx. 0.02%) required due process hearings. Of those, only 81 entered court appeals. Elimination of private right of action would restrict ability of families to challenge localities which are not providing adequate educational opportunities to their children, would limit their ability to seek remedies in a timely fashion and would add a level of bureaucracy to the resolution of problems. Favor continuation of alternative dispute resolution on a voluntary basis. Such procedures may not always be appropriate and therefore should not be required as a first remedy. Any jurisdiction that would undergo severe financial hardship as a result of this legislation, would do so only as a direct consequence of not fulfilling its obligations in a timely fashion. *ADA:* Can be extremely difficult to obtain technical assistance in implementing certain of the ADA's requirements. Support ACIR in its recommendation that the federal government provide increased technical assistance to state and local governments, but also strongly recommends that this service be made available to the general public as well. While federal funding is welcome, ACIR is mistaken in notion that ADA has brought about new accessibility requirements for state and local governments facilities. Sect. 504 established those requirements. Governments that do not provide full accessibility to persons with disabilities are far behind in fulfilling their responsibilities under that law, not ADA. With the wide range of issues encompassed by ADA, enforcement has been assigned to many departments and agencies best equipped to address complex technical provisions of ADA. We do not see this as inappropriate or burdensome. ACIR suggestion that ADA is rigid and inflexible is inaccurate. This is a contradiction of ACIR's criticism that the law is vague and overly broad. Suggestion that standards of accessibility be reviewed within distinct communities is not only appropriate, but a provision of the Act. Local jurisdictions are required to use ADA Accessibility Guidelines only until they develop their own guidelines and have them certified by DOJ. Once this has been accomplished, responsibility for enforcement of those provisions shifts from the federal government to the local jurisdiction. Protection for the intended benefactors of ADA would be better and more swiftly served if they did not have to rely on U.S. AG to instigate legal action

382 Tom O. Sachs, AIA (cont.)

government to the local jurisdiction. Protection for the intended beneficiaries of ADA would be better and more swiftly served if they did not have to rely on US AG to institute legal action. It is shortsighted to try to cut costs for states and localities by weakening laws which ultimately reduce the need for the far more expensive options of institutionalization and dependence.

383 Marsha Hosack
Executive Director
Florida Legislature, Florida ACIR
House Office Bldg.
Tallahassee, FL 32399-1300

General—[Attached are further comments from FL Office of the Governor, FL League of Cities; FL Dept. of Environmental Protection; FL Dept of Elder Affairs; FL Association of District School Superintendents] Respondents generally appreciate attention to issue of federal mandates. ADA summary was not quite accurate. Biggest concern was that ADA requires access to program services which may be provided off-site in an accessible location. Summary suggested that retrofitting is only solution. Respondents found ADA recommendation adequate. In order to answer question "Are the costs of implementing the mandate appropriately shared among governments?" the specific mandate requirements imposed at the state and local levels need to be evaluated. FL ACIR staff: Prefers Option 1 under CAA, Option 1 under CWA, and agrees with first sentence of recommendation under ESA. Recommends encouraging flexible implementation through "safe harbor" and ecosystem management approaches for ESA. Review of ADA too summarized and needs more elaboration in order to show the reader how the ACIR reached its conclusions. Davis-Bacon related acts do not appear to be mandates because they apply to federal government contracts, and because the salary conditions imposed by the act are known through the request-for-proposals and would be built into bids. While changes to or elimination of Davis-Bacon requirements may allow for more efficient use of scarce federal grant resources by eliminating reporting costs or lowering wages paid by contractors, local and state contractors would not incur federally related costs that are not compensated by federal grant moneys. FL Legislative Staff: Combine Option 2 and 3 on Boren Amendment mandate. Concern that limiting the recommendation to Option 2 addresses only half of the cost issue. Simply repealing Boren Amendment does not stop costly litigation against state-determined reimbursement rates. Either the civil rights status of providers as beneficiaries should be altered by law, or legal actions should be limited to suits brought against the federal government regarding federally-approved state Medicaid rate structures. House and Senate Education Committees found IDEA recommendations adequate. House Community Affairs and Legislative Personnel Office concur with ADA recommendations. House Transportation Committee agreed with summary and recommendations on drug and alcohol testing.

Clifford Payne
Accessibility Development Associates, Inc.
3 Gateway Center, 5th Floor
Pittsburgh, PA 15222

ADA—Only retrofit requirement in Title II of ADA is for curb ramps. Requirements is that a plan be developed which shows the schedule for installation of curb ramps (Sect. 35.150(d)(2). There have been recent assertions in the Senate that curb ramps are a “unique significant capital expense.” Assertion that this requirement is too expensive does not bear up. Fact that government may vastly overpay for a service available at a much lower cost reflects poor management. Poor municipal management cannot be blamed on ADA. Also, cost of installing curb ramps is a small portion of the cost of repaving streets, when ramps are commonly installed. Cost of curb ramps is trifling compared to the overall cost of resurfacing streets and roads. Title II clearly states, in Sect. 35.150, that people with disabilities must have access to the programs, services, and benefits offered by state and local government, when those programs are viewed in their entirety. This section clearly states that Title II does not necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities. States that a public entity is not required to take any action that would result in a fundamental alteration of the service, or create an undue financial or administrative burden. It can’t get much plainer than that. In existing buildings, there is no requirement to do an overly expensive retrofit. Title II clearly makes structural modification the last choice, on a list of five. The first option is to relocate program to an accessible location, which is usually a much lower cost item than renovating an old building. This was intended to give municipalities room to be creative. Fact that municipalities have chosen more expensive course over more creative options doesn’t reflect a failure in the law. Lack of vision by local government is not sufficient reason to change a civil rights law. Concerned that the review does not mention the fact that structural changes are not required. One requires that money be spent, the other offers the chance to show how creative local government can be in providing solutions, without having to be micro-managed by a federal bureaucracy. Charge of confusing language can be applied to any legislation; ADA offers more clarity of definition than most, including a section on definitions (Sect. 3.5). Fully agree that there has been insufficient technical assistance offered from the federal government. Also agree that federal assistance should be offered to help with compliance. It has been my direct personal experience that local governments have not taken advantage of the technical assistance available. Issue of budget constraints does not require modification of the law; it requires understanding of what the ADA does mandate. All they have to do is show why it costs too much to do now, and explain when they can do it. Extending time limits for compliance is unnecessary and undesirable. Deadline was far enough ahead to allow everyone to do what ADA requires, provide a transition plan that tells when compliance will be done. Major municipality

384 Clifford Payne (*cont.*)

could easily take a year to figure out what it needs to do, and can simply say so in its transition plan; ADA allows this. Fully support concept of a single federal ADA enforcement and assistance agency. It would be a cost-efficient approach. Cannot support limiting enforcement action to cases brought by federal government; current approach is complaint driven. Civil rights laws cannot be subject to cost-benefit analysis, not if the guarantees of the constitution are to be preserved. "We could save a lot of money on voting machines if women couldn't vote. Care to float that trial balloon?"

385 Nancy Chang, Chair, Committee on Legal
Issues Affecting People with Disabilities
Lisa Friedman, Co-Chair, Committee on
Mental and Physical Disabilities
Lawrence Faulkner, Co-Chair, Committee on
Mental and Physical Disabilities
Association of the Bar of the City of New
York
42 W 44th St
New York, NY 10036

ADA / IDEA—Because civil rights statutes, they do not fall within the purview of Act. Not aware of any civil rights statute that fails to provide for a private right of action, and we would vigorously oppose any move to eliminate this right under ADA and IDEA. Federal agencies are plagued with tremendous backlogs and lengthy delays, and they lack not only the financial resources, but, in too many instances, the political will, necessary in order to properly enforce the ADA and IDEA. Services should be made accessible to persons with disabilities without delay. ADA does not require state and local governments to make all of their existing facilities accessible to people with disabilities. ADA does not require state and local governments to take actions that would result either in a fundamental alteration in the nature of a service, program or activity, or in undue financial or administrative burden. Requirements of Sect. 504 have been incorporated without significant change into the ADA; thus, state and local governments are hardly in a position to claim surprise. Believe that uniform national standards must be maintained if the IDEA is to meet its goal of assuring student with disabilities a free and appropriate education. In the absence of federal standards, state and local governments can be expected to reduce spending on special education, especially in times of fiscal austerity.

386 Mark Smith
Executive Director
Coalition for Citizens with Disabilities
754 N President St, Suite 2
Jackson, MS 39202

ADA / IDEA—Demand that these inaccuracies be immediately corrected and that these corrections be publicized in order to remove the negative and untrue references to ADA and IDEA. To state that these essential protections under the law are unfunded mandates is improper. The undue economic hardship provision already protects entities from overwhelming burdens in architectural modifications. Most alarming is ACIR suggestion that people with disabilities and their families should not have the privilege to initiate legal action to remedy infringement of their rights. Strenuously object to recommendation that ADA requirements should be temporarily or permanently suspended, or made voluntary. [See Comment #191 for personal letter]

Katherine E. Slaughter
Vice-Mayor
City of Charlottesville
City Council
PO Box 911
Charlottesville, VA 22902

General / Environment / ESA—While “no unfunded mandates” is a popular slogan among governmental organizations and some politicians, the public at large is concerned about the protection of public health and the environment. Poll after poll shows that citizens are willing to pay more to ensure that public health is protected. In light of this, the federal role in ensuring that uniform national requirements are in place is essential to the end that all American citizens receive equal protection, regardless of which state they live in. As the Vice-Mayor, a member of Charlottesville City Council and a regional Planning District Commissioner, I am concerned that this report will not reflect the concerns of many elected officials like myself. Local and state governments are required to comply with federal laws. If a governmental body chooses to ignore important requirements, it is subject to enforcement actions by citizens. This is as it should be. Citizens have the right not only to participate in elections to choose officials at the state or local level but also to seek enforcement if laws are not properly enforced by the authorities. Therefore, I strongly object to your recommendation that “only the federal agency responsible for enforcement of a law should be permitted to sue state and local governments.” . . . Citizen suits [in environmental law] were designed precisely because Congress recognized that neither EPA nor the states would be able to enforce all violations, and that citizens acting as private attorney generals would be in a position to supplement the efforts of federal, state and local government. . . . *CWA*: ACIR recommends either restoring direct federal funding for improvements . . . or giving states and local governments greater authority to develop control methods. While I strongly support additional funding . . . in the absence of appropriate federal and state funding, local governments must still meet water quality standards and find sufficient funds to upgrade their public sewage systems. Many municipalities do no wish to raise taxes or institute user fees to do this. As an elected official, I recognize increased fees and taxes are politically unpopular. However, I also recognize that citizens are willing to pay for services received, and local governments must shoulder the responsibility to educate citizens about the need for infrastructure improvements. A 1994 LA Times poll found that 62% of persons polled believed that stricter environmental laws are worth the increased costs. *RE: SDI*:— While some amendments to the existing law may be appropriate, I do not believe that provisions for treatment of surface water supplies should be eased; nor should states be able to assume primacy over the implementation of the law unless they can meet drinking water standards. *ESA*—is

387 Katherine E. Slaughter (cont.)

another law that requires national oversight and uniform requirements. Wildlife do not recognize jurisdictional boundaries; the preservation of threatened and endangered species should continue to be the domain of the U.S. Fish and Wildlife Service. . . . I oppose additional exemptions to the ESA. *RE: Clean Air*—I oppose permitting states to develop their own means of meeting federal air quality standards and elimination of financial aid penalties. . . . the change to national health based national ambient air quality standards was implemented to ensure uniformity and simplify the process. The new Title V permitting process establishes a permitting process similar to that under the CWA to ensure accountability in allocation of pollution. The sanctions penalties are important incentives to ensure that states will comply with the law. . . . To allow states to “develop their own ways of meeting federal air quality standards and eliminate financial aid penalties . . .” would be to return to an approach lacking any real consequences when standards are not met.

388 Sandra McClennen, Ph.D.
Licensed Psychologist
619 North Sheldon Road
Plymouth, MI 48170

ADA / IDEA / FMLA—Several points are made relative to protection from discrimination. In conclusion, the letter says: “Improving efficiency is important, but not at the expense of public access to administrative and judicial remedies. *IDEA*: I strongly support leaving IDEA alone, modifying it only to eliminate those provisions that “encourage and reward the overclassification and segregation of students with disabilities.” I very strongly support increasing the federal share of the cost of IDEA . . . to 40% . . . Please, please, do not leave determinations of an appropriate education to the states. . . . Please, please do not limit the right to sue. I strongly support alternative dispute resolution, but it should not replace the right to sue school districts. *ADA*: I strongly support not changing ADA but modifying its implementation by increasing technical/educational assistance to state and local governments, providing federal funds to assist state and local governments in the cost of physical modifications, and designating a single federal enforcement agency. Please do not modify or reduce ADA application or limit or eliminate an individual’s right to sue . . . Empowerment does not occur without the right of individuals to petition courts for relief. . . . *FMLA*: I support leaving the law as it is, with changes only to allow for some flexibility in meshing local/state government policies with the law’s provisions. . . . Federal regulations assure uniform application of the law throughout the U.S., insuring that the law’s policy objectives are met.

389 Mr. and Mrs. Fred R. Morton
[No address]
Fax: 1-800-460-7643

IDEA—The following lead sentences are each followed by some discussion. (1) IDEA was cost-effective reform when it was first written and it is even more cost effective today. (2) Federal safeguards are critical. (3) Discipline guidelines in IDEA are more than adequate and do not need strengthening. (4) The IDEA is not a litigious law. (5) Parents must retain the right to reimbursement of legal fees. (6) The IEP is the heart and soul of IDEA. (7) Related services delivered by qualified personnel are essential tools for learning from many children with disabilities. Conclusion: . . . Parents and children are the customers; Administrators and School Boards are our employees. While I understand their resentment regarding funding they are morally and ethically obligated to provide education for all American children. **KEEP IDEA INTACT.**

390 Elizabeth W. Bauer
Executive Director
Michigan Protective & Advocacy Service
106 W. Allegan, Suite 300
Lansing, MI 48933-1706

ADA / IDEA / FMLA / General—See ADA and IDEA not as “unfunded mandates” but as civil rights laws.” Several comments related to general issues made including: Laws prohibiting disability discrimination require the same “private attorney general” powers present in laws prohibiting race-based discrimination. Strong national laws prohibiting disability-based discrimination require an equal national commitment to funding those programs and agencies charged with enforcement and administration of remedial programs and services. Consolidating and streamlining bureaucratic institutions to improve efficiency is to be favored, but not at the expense of public access to administrative and judicial remedies. **IDEA:** I strongly support ACIR’s Recommendations #1 & 2 (Leave IDEA alone except for minor modification and advocate increased funding to the 40% level.) Oppose Recommendation #3 & 4 (let states determine appropriate education and limit the right to sue over procedural violations.) **ADA:** I strongly support ACIR’s recommendation #1 (Don’t change ADA but provide increased technical / educational assistance to state and local governments; provide federal funds to assist in implementation; and designate a single federal agency). Oppose Recommendations #2 & 3 (Modify timetable and/or requirements and limit individuals right to sue.) **FMLA:** I support ACIR’s Recommendation #1 (Leave law alone except to allow for some flexibility in meshing local/state government policies with the law’s provisions). Oppose Recommendation #2 & 3 (Exempt state and local governments from FMLA and grant to states the right to adopt and apply rules “consistent with FMLA”.[Note: in the discussion supporting comments on FMLA, it says: “state and local governments should be accorded some flexibility in meeting the law’s mandates, so long as the policies are in conformity with the law and its regulations.”

- 391 Donna Karstan
No address
[Letter faxed from Alpena Holiday Inn
Alpena, Michigan]
- IDEA—I advocate for student with disabilities as well as attend college to learn more about laws and what they can do to help these students. . . . We parents know our children better than anyone else. Please keep IDEA in force so that we can help our children become the best that they can.
- 392 Laurie Kilgore
6937 Michael Drive
Hubbard Lake, MI 49747
- IDEA—As a parent of a daughter with LDS . . . we struggled as parents to fight for rights . . . we struggled for testing and help for her. . . . These children and adults have the right to public education in the way they can learn best whether mainstreamed or as in my daughter's case all test and directions read to her. Not everyone in this world learns in the same manner, but that doesn't mean the can't learn. Thank you for listening.
- 393 Janet Hourt
Presque Isle, MI
[Letter faxed from Alpena Holiday Inn
Alpena, Michigan]
- IDEA—[The faxed letter is nearly unreadable; but, the gist is something about where an 18 year old son would be without IDEA. The letter goes on to say: "Laws are supposed to be made to help people not harm them. So please, reject the ACIR recommendations and keep our children safe from unfair discrimination."]
- 394 Joyce Kilpatrick
300 Lockwood
Alpena, MI
- IDEA—I am an advocate of parents and children with disabilities. . . . The individuals that I represent and serve would face many substantial social and economic barriers to success without IDEA and the other strong federal laws. . . . I understand that the ACIR has said that the IDEA should be changed in several ways. . . . Congress should give the state more money to help meet IDEA's purposes. IDEA funding and laws must be maintained—NOT relaxed. . . . Children with disabilities need the same federal protections given to minorities and women, no matter where they live. I believe that parents are the strongest and best advocates for their children and they need the tools to promote their children's needs. I have a child with ADHD . . . I speak from the experience of living through the struggles. . . .
- 395 Cheryl O. Brown
241 N. Jefferson
Alpena, MI 49707
- IDEA—I am an advocate for children with disabilities and I am very concerned about the status and funding of IDEA. . . . I am very opposed to any recommendations that you have made to change IDEA and hope you reconsider your position.

- 396 Julie A. Bee
Child Advocate
No address
[Letter faxed from Alpena Holiday Inn
Alpena, Michigan]
- IDEA—I am an advocate of children with emotional disabilities. The children I advocate for at a Community based residential treatment center would face many social and economic barriers to their success without IDEA. . . . I understand that the ACIR has said that IDEA should be changed in several ways. . . . Congress should give states more money to help meet IDEA's purposes. IDEA's funding and administration laws must be maintained.
- 397 Kelly S. Irving
No address
[Letter faxed from Alpena Holiday Inn
Alpena, Michigan]
- IDEA. . . as an advocate for children with disabilities and special needs, I am extremely concerned with the fate of IDEA. . . . The right to a free, appropriate public education is a national right for all children, especially those with special needs. Congress also has a[n] obligation to children with disabilities to make sure IDEA's funding and administrative laws are maintained. These vital laws must be maintained, they cannot be relaxed. . . .
- 398 Jay D. Kilpatrick
300 Lockwood Street
Alpena, MI 49707
- IDEA—I am a parent and also advocate for child and children with disabilities (ADHD / LD) . . . Please strengthen the IDEA! . . . It is far more productive to educate than to build jails. If we don't support families with handicap children early on those children grow up to become a burden to themselves and their country. Please put money in IDEA. I am willing to pay my share in taxes and help in other ways.
- 399 Vera L. Middleton
4115 S. Bissonette Road
Glennie, MI 48737
- IDEA—I am advocating for children with disabilities. I believe IDEA is vital to children with disabilities rights protection. Without IDEA I believe millions of children would be denied the chance to become productive tax-paying citizens. I understand ACIR believes IDEA should be changed. I believe: funding and laws must be maintained; free/appropriate/public education is a national right. . . . Parents keep IDEA strong promoting children's needs; When schools fail to follow IDEA the burden of cost should fall on it/them. I do not/can not support ACIR IDEA recommendations. ACIR recommendations would strip IDEA and be stepping backwards for children. Please reject ACIR recommendations and keep children safe from illegal and unfair discrimination.

400 Diane Damon
37687 Monaghan Point Road
Alpena, MI 49707

IDEA—I am a parent of a child with disabilities. . . . My child and our family would face many substantial social and economic barriers to our success without IDEA. . . . I believe that IDEA has helped millions of children with disabilities to become strong adults. Congress needs to give parents more money to help meet IDEA's purposes. . . . If IDEA is going to keep that role strong, parents need the tools. Parents would be powerless if they could not hire a lawyers and go to court when schools failed to follow IDEA. It's only fair that the schools pay family attorney fees if they've failed to follow IDEA. . . . I cannot support the ACIR IDEA recommendations.

#	NAME & ADDRESS	COMMENT TOPIC
401	Denise Procuner No address [Faxed from Alpena Holiday Inn Alpena, MI]	IDEA —IDEA is as vital to children with disabilities as the civil rights laws are to protecting the rights of racial and ethnic minorities. . . . Children would not achieve their potential and literally, millions of children would be denied the chance of becoming <u>productive, tax-paying citizens</u> . I realize that ACIR has said that IDEA should be changed in several ways. For me and the children that I advocated for, I believe that; 1) IDEA has Helped missions of children with disabilities . . . ; 2) The right to free, appropriate, public education is a national right . . . ; 3) Parents are the strongest and best advocates for children with disabilities. I cannot support the ACIR IDEA recommendations. The ACIR recommendations would take away the protection of IDEA and put our children back to where they were before the protection of IDEA.
402	Cindy Leeseberg No address [Faxed from Alpena Holiday Inn Alpena, MI]	IDEA —I am a parent of a child with disabilities. I believe that IDEA is as vital to children with disabilities as the civil rights laws are to protecting the rights of racial and ethnic minorities. . . . Children would not achieve their potential and literally, millions of children would be denied the chance of becoming <u>productive, tax-paying citizens</u> My son has several needs that cannot be met in a regular education classroom. It is my role—my responsibility—as his parent, to ensure he has the opportunity to reach his potential, whatever that is. It takes a village to raise a child, and I am depending on you to continue doing your part. Please keep our children safe from illegal and unsafe, unfair discrimination.
403	Ellen Sarnacks 4576 Merkel Lane Oscoda, MI 48750	IDEA —I am the parent and advocate for my son, Zachary, who is ADHD. I strongly believe that . . . IDEA is as needed to protect the civil rights of children with disabilities as surely as the Civil Rights Act [is needed] to protect the rights of minorities and women. Who if not you will be the voice of these children and their families? All children with disabilities and their families face financial and social barriers at every turn. Congress should be more forthcoming with funds to help meet IDEA's purposes. The laws need to be maintained.
404	Geraldyn Friedrich 24305 Dale Eastpointe, MI 44021	IDEA —I believe that IDEA is a very important civil right[s] law that protects our children. Without IDEA, many of our children would face severe obstacles in life. Parents, teachers, and support staff need IDEA as a rule to follow and guide us to the best plan for our children.

- 405** Fern Beasley
2997 Mohawk Lane.
Rochester, MI 48306
- 406** Pat Boyer
No Address
[Faxed from the Michigan Protection and
Advocacy Service]
- 407** Laurel E. Wagner
4319 Auburn Dr.
Royal Oak, MI 48073
- 408** Darlene Davis
No Address
[Faxed from the Michigan Protection and
Advocacy Service]
- 409** Julijina Connelly
No Address
[Faxed from the Michigan Protection and
Advocacy Service]
- 410** Margaret L. Purves
9920 Norman Road
Carkston, MI 48348
- IDEA**—I am the parent of a child with disabilities. For my child, I believe that: (1) IDEA has helped missions of children with disabilities; (2) The right to a free appropriate, public education is a national right; Parents are the strongest advocates for their children. My child has ADHD and without support from IDEA, he would be totally lost.
- IDEA**—I do not support ACIR IDEA recommendations.
- IDEA**—As an educator and advocate of children with disabilities, I contend that IDEA is as vital to the welfare of each of these children as civil rights laws are to protecting the rights of minorities. Our children will face many substantial social and economic barriers to our success without IDEA and other strong federal laws. IDEA is the vehicle which allows them (the parents) to be the voices for their children—the voices of our future. We cannot support the ACIR IDEA recommendations.
- IDEA**—I am a parent advocate of a child with disabilities. My son, Chris, would face many substantial social and economic barriers to his success without IDEA.
- IDEA**—I am a parent of a son with disability[ies]. Parents are the strongest advocates because the [parents have] experienced the problems.
- IDEA**—I believe that IDEA is vital to children with disabilities.

- 411** Corine Asher
13120 Sherwood
Huntington Woods, MI 48070
(810) 399-5771
- 412** Nancy Martinez Higgins
No Address
[Faxed from the Michigan Protection and
Advocacy Service]
- 413** Marguerette Trebnik
No Address
[Faxed from the Michigan Protection and
Advocacy Service]
- 414** Karen M. Lighaus
4729 Carrington Court
Roch, MI 48306
- 415** Sharlene Novn
8825 Grace
Shelby, MI 48317
- 416** Dina H Anderson
22710 Newport
Warren, MI 48903
- IDEA**—I am the parent of a child with disabilities. . . . IDEA is vital to my child as well as all the children with disabilities. . . . IDEA has helped millions of children with disabilities. . . . The right to a free, appropriate, public education is a national right. . . . Parents are the strongest and best advocates for children with disabilities. We can not support the ACIR IDEA recommendations.
- IDEA**—I am the parent of a child . . . with disabilities. Our children are always being discriminated against.
- IDEA**—My husband and I have two children with disabilities. We do not support the ACIR IDEA recommendations. Please help us protect our children and their friends.
- IDEA**—I am the parent of a child with disabilities. I believe IDEA is vital to protect his rights.
- IDEA**—I believe that IDEA is . . . vital to children with disabilities. . . .
- IDEA**—My children and my family would face many substantial social and economic barriers to our success without IDEA. I cannot support the ACIR IDEA recommendations. The ACIR recommendations would take away the strongest protections in IDEA and put our children back into the same situation.

417 John G. Flora
City of Fridley
Fridley Municipal Center
6431 University Ave., NE
Fridley, MN 55432
(612) 571-3450

SDWA/CWA/FWA/OSHA—As the Director of Public Works and City Engineer of an urban community of 30,000 people just north of Minneapolis, I wholeheartedly support the findings of the Commission. *Fair Labor Standards Act* caused considerable cost to the city specifically inspecting our construction projects and repairing major utility breaks that occur within the city. *Occupational Safety and Health Act* administered in minutia detail to many aspects of the city's operations, again resulting in considerable expense and delay in meeting a number of our emergency situations that occur. The Drug and Alcohol testing for commercial drivers is a new and expensive policy that is being added to the city. *Clean Water Act* has not required a major change to the city as we have separated our storm and sanitary systems, we believe the mandated requirements for storm water control are extremely costly and impractical to implement. *Safe Drinking Water Act* has been an extremely costly and ineffective application to the city.

418 Denise Fenwick
2850 Fannin, #20
Houston, TX 7702
(713) 750-5739

ADA—*Recommendation 1*: ADA is not a social benefit. . . . The ADA is a civil right which prohibits discrimination against individual with disabilities in employment, public service, and public accommodation. *Recommendation 2*: State and local governments should be provided strict guidelines and time requirements to ensure that anti-discrimination laws are enforced. ADA legislation did not affect spending for social services on the state level. By limiting ADA, you not only affect adults with disabilities, but children also pay the price.

419 Sylvia Segura Smith
2850 Fannin
Houston, TX 77002
(713) 750-5871

ADA—*Recommendation 2*: I support enforcing strict federal standards. Expressing issues regarding an individuals civil rights requires consistency across our nation. *Recommendation 3*: Any citizen should be able to bring legal action. The Attorney General is an employee of the federal government which creates a conflict in representation.

420 Annie Upson
no address

IDEA—[See comment #123.] Personally written form letter..

Clean Air—[W]e ask for alteration in the proposed recommendation in Common Issue 3, we oppose the recommendation in Common Issue 4, and we take issue with the recommendation (and the background upon which it is based) for the *Clean Air Act*. . . . Our reasons follow:

I. “Federal failure to recognize state and local governments’ public accountability.” While states are sovereign governments, in fact as in theory, with powers derived from the federal Constitution, they often fail to act like it. . . . [A]s a general rule, the smaller the government unit, the more difficult it is to sustain a focus on preserving and promoting the public interest in the face of well-funded and sophisticated strategies to push through ventures which run counter to local land-use plans, local zoning (where that exists), the wishes of the citizens, and even the express wishes of the local governing body. In our experience over the last decade, it is the federal level of government which has frequently been the most responsible, responsive, and helpful. We therefore, ask that the following be used in lieu of the proposed language: “State government sometimes fail to advocate or act in the public interest and are therefore often treated by the federal government as just another interest group, or private entity. On the other hand, because they consistently advocate the public interest, non-governmental advocacy groups’ views have sometimes been given more attention than those of state and local governments. **II.** “Lawsuits by individuals against state and local governments to enforce federal mandates.” Many federal laws allow states to develop their own, congenial programs for assuring that national standards are achieved within state borders. Allowing citizen litigation may subject state and local governments to budgetary uncertainties and legal costs, but these uncertainties and costs can be avoided by prompt, effective state enforcement of program requirements. We find the reasoning of proposed Common Issue 4 flawed, and we oppose the concluding recommendation that only a federal agency be allowed to sue for enforcement of a law. **III.** Recommendation with respect to the *Clean Air Act*. The background under *The Clean Air Act* ignores critical points which underlie the 1990 amendments to the *Clean Air Act*. Consequently, the proposed concluding recommendation is also severely flawed. Accurate background would take note that: (1) Statutes . . . normally set forth legislative goals and then outline a broad framework for achieving them; (2) The normal paradigm sometimes breaks down . . . ; (3) Congress therefore stepped into the breach . . . ; and (4) Air is inter-jurisdictional by nature, requiring federal oversight and intervention in order to assure proper incentives and nationwide achievement of acceptable air quality. The proposed language of this section is misleading to the point of error when it ignores this background. . . . The states earned their

421 Nancy Summers (cont.)

diminished discretion by two decades of failure to accomplish results on their own. The proposed recommendation would return the country to that period of failure, and would lead to additional years of unnecessarily poor air quality. Before we proceed with the drive for greater state's rights and a weaker federal presence, we should examine whether states have the ability and the will to resolve a given problem.

422 Edward D. Hansen, Mayor
City of Everett
3002 Wetmore Ave.
Everett, WA 98201
(206) 259-8700

General/SDWA/CWA/ADA—I would like to express support for the direction in which your Commission is heading with this report. Unfunded mandates impose a significant financial burden on local governments which had gone virtually unnoticed until recently. In my tenure as Mayor of this city of about 80,000 people, I have instituted an aggressive effort to keep track of and list the costs of state and federal mandates passed onto Everett by the state and federal governments. In 1996, the total cost of these mandates is expected to be about \$8.8 million (see attachments in letter). For our city, which operates the second largest water utility in Washington and maintains its own transit agency, the most problematic mandates are those contained in the *Safe Drinking Water Act*, *Clean Water Act*, and *Americans with Disabilities Act*. We support your recommendation of Page 13 to lend more flexibility to states and local governments under *Safe Drinking Water Act*, and repeal, as you point out, "Some of the most onerous provisions" regarding mandatory contaminant testing regardless of the threat a contaminant may or may not present. We also support the recommendations on ADA on page 12, particularly the notions that increased funding assistance be made available to help governments meet ADA goals and requirements. Finally, your report's recommendations on the *Clean Water Act* (pp. 10 - 11) reflect my strong belief that local governments should be provided extra measures of control and flexibility to meet federal goals and obligations, rather than being handed a "one-size-fits-all" mandate that doesn't necessarily reflect reality.

423 James Finley
Connecticut Conference of Municipalities
900 Chapel Street, 9th Floor
New Haven, CT 06510
(203) 498-3000

General/FMLA/Davis-Bacon/Drug/Metric—Connecticut cities and towns are very aware of the impact of federal mandates to local governments. Municipalities in Connecticut are too often forced to carry out federal policies with little or no federal funding. It is inappropriate and inequitable to force cities and towns to assume all or most of the costs. More than half of all municipal expenditures in Connecticut pay for state and federal mandated services or benefits, leaving over half of all local budgets beyond local control. Municipal control over municipal finances must be restored. This is particularly true in today's difficult fiscal climate. The necessary first step toward reaching this goal must be a reexamination and reform of the federal mandates system. Please see notes for further details.

424

Diana MTK Autin
Executive Co-Director
Statewide Parent Advocacy Network
156 North Avenue East
Westfield, NJ 07090
(908) 654-7726

ADA/IDEA—[IDEA] and [ADA] are key to ensuring that children, youth and adults with disabilities have appropriate education, employment, housing and public accommodations. . . . While the “Mandates” and “Background” sections of your Staff Working Paper summarize the important purposes of these laws, many of the “Concerns” and “Recommendations Options” ignore the reality of continued discrimination and exclusion on the basis of disability and the facts (as opposed to popular misconceptions) concerning issues such as cost, “litigiousness,” and “rigid mandates.” (Specific objections to ACIR’s Concerns and Recommendations are included in the testimony.) . . . The Statewide Parent Advocacy Network . . . urges the Advisory Commission on Intergovernmental Relations to reject those recommendations contained in the Staff Working Paper that would limit the ability of children and adults with disabilities to secure their rights to equality and liberty.

425

Katherine G. Butler
American Speech-Language-Hearing
Association
10801 Rockville Pike
Rockville, MD 20852
(301) 897-5700

ADA/IDEA/OSHA/FMLA/General—The American Speech-Language-Hearing Association (ASHA) . . . stand[s] in strong opposition to the recommendations of the Advisory Commission on Intergovernmental Relations as contained in the Commission’s preliminary report entitled, *The Role of Federal Mandates in Intergovernmental Relations*. Not only is the report replete with inaccuracies and devoid of any type of empirical data to support the recommendations, the process by which the report was developed, is also suspect. . . . We recommend that the ACIR disregard the recommendations contained within the preliminary report, and instead base any future reports on the record of public comments received either at the hearing or submitted pursuant to the request for comments as published in the *Federal Register*.

426

Elizabeth Ambrose
Director of Alternative Advocacy
Washington Protection & Advocacy System
1401 E. Jefferson, Suite 506
Seattle, WA 98122

ADA/IDEA—We wholeheartedly support the comments from the Seattle Human Rights Commission urging you to reject Recommendations 2 and 3 regarding the [ADA]. Recommendation 3 is of particular concern to us . . . it would restrict legal action against a state or local government to enforce the ADA to the U.S. Attorney General’s Office only. ADA is used by organizations such as our as well as by private attorneys in the community to bring about cost-effective, positive change. Restricting the use of this tool to the Attorney General would reverse the trend toward improvement of services and essentially eviscerate any remedies available under the ADA. Delays in complaint investigations would increase dramatically and the valuable resource of private attorneys willing to take on these issues would be lost. Similarly, we support the Seattle Human Rights Commission comments urging you to reject

426 Elizabeth Ambrose (cont.)

Recommendations 3 and 4 regarding [IDEA]. In addition to their comments . . . federal rules are important because parents are already at a disadvantage in understanding the special education system, and the federal level regulations lay out some rules for all to play by. In regard to Recommendation 4, it is important to note that original court action by individuals is a resource rarely used because of the series of administrative remedies that must be exhausted, and because of the prohibitive cost involved.

427 C. Robin Britt, Sr.
North Carolina Department of Human
Resources
101 Blair Dr.
P.O. Box 29526
Raleigh, NC 27626-0526
(919) 733-4534

IDEA—I appreciate the opportunity for input regarding the *Individuals With Disabilities Education Act* (IDEA). Since the passage of P.L. 99-457 in 1987, we have been designated as the lead agency for management of Part H (Infant and Toddler Program). Also, a number of our divisions have historically been an major service provider for children between the ages of 3 and 21 through a variety of community based programs and state facilities. My comments fall into two general areas: (1) . . . the level of federal funding has never been sufficient since the inception of this legislation. In lieu of any additional available resources, it is critical that states be relieved of costly administrative mandates. The regulations established for Part H offer a positive example for the other components of IDEA. They provide tangible achievable goals for the states, yet allow them a great deal of flexibility in how they achieve these goals. (2) In the area of dispute resolution, we have established mediation as a preliminary step in our dispute resolution procedures for early intervention services for infants and toddlers. . . . Based on our experiences here, I would strongly recommend that such a step be built into the procedures for all the children. IDEA has been a major factor in strengthening our services for children with disabilities over the past 20 years.

John H. Sullivan
American Water Works Association -
Government Affairs Office
1401 New York Avenue, NW
Suite 640
Washington, DC 20005
(202) 628-8303

General/CWA/SDWA/OSHA/ESA—The comments provided herein reflect the consensus of the AWWA that, given the depth and breadth of its representation, also reflect the predominant view of the drinking water community. It is therefore appropriate that these AWWA comments be heard on behalf of the drinking water community. AWWA agrees with many of the recommendations in ACIR's preliminary report. The preliminary report represents a significant effort by the Federal government to look at its own actions and determine if it has overstepped its statutory authority in the past. The preliminary report is consistent with President Clinton's on-going efforts to reinvent government so that it operates more efficiently and to reproduce the paperwork burden. If the report's recommendations are acted upon and the same type of analysis is performed for all of the mandates identified, many of the financial burdens that have been placed on state and local governments might be greatly reduced. On page 4 of the preliminary report, ACIR describes six common issues related to current federal mandates that it found troublesome for intergovernmental relations. . . . **Common Issue #1: Detailed Procedural Requirements: AWWA concurs with ACIR.** . . . A clear example of how this is not being done is the monitoring and reporting requirements for drinking water contaminants under SDWA. Although there have been attempts as simplifying the monitoring process, when considering the number of regulated contaminants, the process continues to be amazingly complex [(See Appendix A of letter for details)]. Perhaps States should be given the opportunity to set monitoring and reporting requirements that are tailored to their local conditions. **Common Issue #2: Lack of federal concern about mandate costs.** . . . [C]osts for state/local/Tribal governments are frequently given inadequate consideration. The drinking water community does not mind paying for federal mandates with proven public health benefits. Their main objection is rather that these moneys should be spent wisely, that is, that spending of these critical dollars is done where it will maximize public health protection. **Common Issue #4: Lawsuits by individuals against state and local governments to enforce federal mandates.**—AWWA agrees with ACIR the "only the federal agency responsible for enforcement of a law should be permitted to sue state and local governments" . . . Citizen suits are useful when the appropriate government agency has not acted to enforce the law. However, the SDWA allows citizen suits when a state or the EPA has taken enforcement action. When the appropriate agency has already taken action, citizen suits add nothing to public health protection while at the same time place a financial burden on local communities. **Common Issue #5: Inability of very small governments to meet mandate standards and timetables.** The problems of small public water systems have been a concern for AWWA. Economies of scale have a significant impact in the drinking water

industry. . . . Consequently, small systems may lack the financial capability to comply with all of the technical aspects of the SDWA and subsequent regulations. . . . The current SDWA for the most part ignores the special requirements and difficulties of small systems. *Common Issue #6: Lack of coordinated federal policy with no federal agency to make binding decisions about a mandate's requirements.* An example of this is in obtaining a permit to place fill under Section 404 of the CWA. Sec. 404 permits are issued by the U.S. Army Corps of Engineers after coordination with several other agencies. However, under Sec. 404(c) of the CWA, the EPA has veto authority over the permit and can execute that authority at any time in the permit process. [An example is given of a James City that worked for 7 years to obtain a permit only to have EPA enter at the end of the process and veto what had been agreed to between the city and the Corps.] . . . However, the real issue with a lack of coordinated federal policy is not with decisions on locations of individual reservoirs, but with the lack of coordinated federal policy on water allocation. . . . competing uses are regulated by several federal agencies . . . Existing water compact and water rights further complicate water allocation. Yet there is no coordinated federal water allocation policy, and such a policy is needed to straighten out the current mess! **Comments on Specific Laws: OSHA:** AWWA agrees with Recommended Option 1 (Make no significant changes in the law). AWWA has been supportive of "moderate" OSHA reform. **CWA:** AWWA concurs with ACIR's assessment that pollution prevention programs such as the CWA are of sufficient priority to justify federal attention. Unfortunately, there has been a recent trend towards decreasing federal funding for wastewater collection and treatment improvements, including pollution prevention. AWWA strongly supports increased funding for pollution prevention. . . . **SDWA:** AWWA agrees with ACIR's statement that federal regulation of drinking water is warranted since drinking water quality affects travelers as well as community residents. AWWA also agrees with ACIR's belief that the existing SDWA does not allow sufficient flexibility for state to manage their drinking water programs. AWWA strongly supports ACIR's recommendation to make changes in the current law. **ESA:** AWWA concurs with ACIR's recommendation for the *Endangered Species Act* (ESA). State and local governments should have more of a role in the listing process for threatened and endangered species. Also, ESA should be revised so that exemptions are available to minimize social and economic impacts and there should be increased federal funding for implementation. AWWA would also recommend that the federal government compensate property owners for a loss or diminished use by an ESA restriction. . . . One issue not addressed by ACIR in regard to ESA is its effect on state and tribal government rights to make water allocation decisions.

Justine Malony
 Learning Disabilities Assoc
 Paul Marchand
 The Arc
 Kevin Dwyer
 National Association of School
 Psychologists
 Katherine Beh Neas
 National Easter Seal Society
 Consortium for Citizens with Disabilities
 [No Address]

IDEA—IDEA is a civil rights law and is specifically excluded from the scope of the Unfunded Mandates Reform Act. . . . The ACIR final report should not include recommendations on IDEA. . . . The preliminary report makes its findings on the basis of incomplete data. (1) The report states, "IDEA . . . imposes significant costs and administrative burdens on state and local governments." IDEA has resulted in significant savings to government. Because of IDEA's support to states, millions of children with disabilities have been able to reside at home with their families and attend school. In 1994, the number of children and youth (0-21) with developmental disabilities living in state institutions was less than six percent of the number of children and youth living in state institutions in 1974, the year before the passage of P.L. 94-142, *the Education for all Handicapped Children Act of 1975*. (2) The report finds that, "The resolution disputes under the Act also has become overly-litigious and has added to implementation costs. Currently, local agency decisions may be challenged in state or federal court . . . parents bringing actions on behalf of their children may be entitled to reimbursement for their costs, including attorney and court fees. (3) Finally, IDEA is likely to be the only civil rights law that provides financial assistance to the states for its implementation. The ACIR preliminary report, through its misleading findings and recommendations, damages this law and hurts children with disabilities. [See attached comments]—The following comments were prepared by the Georgetown University Law Center's Federal Legislation Clinic on behalf of CCD Education Task Force.

Curt Decker, National Association of Protective and Advocacy Systems
 Bob Herman, Paralyzed Veterans of America
 Becky Ogle, Justice for All
 Len Rubenstein, Bazelon Center for Mental Health Law
 Julie Carroll, American Council for the Blind
 Maureen McCloskey, Paralyzed Veterans of America
 Consortium for Citizens with Disabilities
 [No Address]
 Remarks prepared by the Georgetown Federal Legislation Clinic, Georgetown University Law School

ADA—The ACIR report commendably acknowledges that the “ADA provides important and necessary social benefits,” but states that the ADA [creates] problems for state and local governments with “tight budgets” that have “limited time” to comply with “expensive retrofitting and service delivery requirements.” The ACIR report is especially concerned with the “numerous lawsuits over legal interpretations of the ADA” fostered, in part, by “insufficient” technical assistance and “uncoordinated” federal enforcement. These concerns are worthy of study if they affect the way state and local governments perceive their compliance obligations, but ACIR should only [recommend changes in [ADA]] with great caution. The Department of Justice issued implementing regulations only after considering the views expressed in four public hearings. . . . Most state and local governments were capable of expressing well-informed opinions when contributing to the law’s formation because of their experiences in implementing. . . . Section 504 of the *Rehabilitation act of 1973*, [which] prohibits discrimination on the basis of disability in federally assisted programs and activities. Because of its careful crafting, . . . ADA . . . addresses the concerns noted in the ACIR report. [ADA]: is goal oriented and flexible; recognizes budget constraints; and enforced and [federally funded] in ways that permit the development and dissemination of necessary expertise. Finally, litigation costs are minimized by a system that emphasizes cooperation, mediation, and settlements, while still providing the private cause of action so essential to the protection of fundamental rights. ACIR should exempt ADA from evaluation in this final report, or at the very least, be particularly careful in its analysis to correct misperceptions about the law. . . . [See attached comments].

Peter J. Powers
 Office of the Mayor
 The City of New York
 New York, NY 10007
 (212) 788-1536

General/FSLA/Davis-Bacon/IDEA/ADA/Environment— . . . half our budget is consumed by mandates. . . . The city’s efforts to achieve long-term fiscal stability largely depend on the willingness of the federal and state governments to curtail the long-standing practice of shifting costs to the local level . . . relief from current mandates is . . . pressing. ACIR identified some of the most costly and burdensome federal mandates plaguing cities, states, counties and villages across the country. Take for example [FLSA, and IDEA]. These unfunded and underfunded mandates jeopardize our ability to provide critical services, even in the areas they seek to address. The requirements of these mandates programs are unnecessary, excessive, outdated or inadequate to address local needs. We all agree that the federal government must exercise its power to resolve national needs; however, for too long, the rights of states and localities to govern their own affairs and set their own budget priorities have fallen by the wayside. Hopefully, the Commission’s report will serve as the framework for debate and discussion, and action to make the needed changes. [See attached comments].

432

Robert E. Martinez
Office of the Governor
State of Virginia
P.O. Box 1475
Richmond, VA 23212
(804) 786-8032

Davis-Bacon/Metric/Crumb Rubber/ADA/CAA— . . . in recent years, the amount of federal intrusion into state and local affairs has increased. Mandates should be enacted only when there is a compelling federal interest that justifies the intrusion into state and local activities. When such mandates are necessary, the costs of implementing a federal goal must be funded by the federal government; there should be no unfunded mandates. It is critical that the states be given the authority to comply with mandates in the most cost-effective manner that best suits their particular needs and conditions. The [*Clean Air Act* and *ADA*] . . . require substantial revision to reduce the burden placed on the states, local governments, and transit properties. Please do not misunderstand this position. The goals of *ADA* [and *Clean Air*] were commendable, but in actual practice, often unworkable. I support the Commission's recommendation to repeal requirements for metric conversion . . . and the required use of recycled crumb rubber asphalt. *Davis-Bacon* should also be among those mandates recommended for outright elimination, and not simply amended. The ongoing challenge is to resolve national needs while at the same time protect the rights of states and local governments to govern their own affairs, and set their own budget priorities. We support your efforts to review additional mandates as soon as possible, and hope this effort will be authorized.

433

Representative Marda Dillree
Utah ACIR
116 State Capitol
Salt Lake City, UT 84114
(801) 538-1571

ACIR is to be commended for the depth of analysis and supportive role it has taken on state mandate relief and the impact of mandates on small local governments. We fully concur with the statement that . . . state and local governments are often thought of as "just another interest group" or as "an administrative unit of the federal government. They are neither. state and local governments are publicly accountable entities, composed of officials elected by the constituency in their jurisdiction. The requirements imposed by mandates are usually desirable and socially beneficial, but the means to attain the objective are often cost prohibitive or economically unfeasible. As an incentive [for state and local governments] we suggest that additional funds, rewards, or allowances should be given for compliance, thus reinforcing positive achievements. UACIR enthusiastically supports ACIR's recommended changes in federal policies to improve intergovernmental relations while maintaining a commitment to national interests. We do however, have some suggestions for modifications to your recommendations pertaining [to *ADA* and *IDEA*]. UACIR concurs with your core recommendations but does not support that part of the recommendation limiting an individual's right to bring legal actions against state and local

Representative Marda Dillree (cont.)

governments . . . we also non-concur with the Davis-Bacon Acts recommendation. Rather than exempting projects below a certain dollar amount, state and local governments should be exempt altogether from the requirements of Davis-Bacon. We feel strongly that the repeal of these provisions pertaining to state and local government is more appropriate.

434 Bruce and Lydia Boyton
[No Address]

IDEA—We support the recommendation to fund IDEA at appropriate levels, not at the current 8 percent. We are concerned that eliminating the requirement to fund special education beyond the amount of federal funding would transfer needed services to regular education. Regular education is already challenged to provide services to students who have multiple needs. Regular education cannot respond to the additional needs of students with disabilities without additional resources.

435 S I Jakub
[No Address]

Metric—Leave the law as it is. The cited problems will solve themselves with time as workers learn what they need to learn on the job. Any future generation will need to learn this knowledge, why not ours? Nothing will be gained by postponing the changeover, only more people yet will be confused as population grows.

436 Arthur A. Coia
General President
Laborers' International Union of North
America
905 16th Street, NW
Washington, DC 20006

Davis-Bacon / OSHA / FLSA / **FLSA**—**Davis-Bacon**: Urge reconsideration based on economic studies indicating repeal will not only undercut the standard of living of millions of construction workers but will also shift additional burdens to state and local governments; **OSHA**: The recommendation is precisely the opposite of the action that is needed. Rather than curtailing the already-limited influence of OSHA over state and local government workplaces, it is [our] view that it is time to end the practice of treating government employees as “second-class citizens.” Just as Congress recently chose to apply the federal regulations to its own employees, we see no reason why the full measure of protections that are provided to private-sector workers should not also be provided to all government employees. **FLSA**: Repealing these protections would be a head-long leap into a past in which state and local government employees often received unfair treatment from their chronically cash-strapped government employers.

437 Mark D. Laponsky, Esq.
Semmes, Bowen, & Semmes
250 West Pratt Street
Baltimore, MD 21201

FLSA / FMLA / OSHA / Drug & Alcohol / Metric—The letter encloses a resolution from the City of Carrollton, Texas supporting the ACIR recommendations and urging Congress to consider modifying the application of federal laws to local municipalities.

Leonard S. Rubenstein
Bazelon Center for Mental Health Law
1101 15th Street NW,
Suite 1212
Washington, DC 20005-5002

ADA / IDEA—ADA: the recommendations will seriously undermine these hard-won civil rights of adults and children with mental disabilities. Whether intentionally or not, some states and municipalities have been slow to conform their public programs; but ACIR's suggestion [provide funds or flexibility] is "redundant because the ADA already recognizes budget constraints by allowing governments to make good faith efforts compliance efforts. . . . a single federal ADA enforcement and assistance agency would create rather than alleviate confusion and would hamper compliance and enforcement efforts. Technical assistance is already widely available from a variety of governmental and nongovernmental sources, suggesting that noncompliance is due more to inadequate effort than to inadequate information. While [we] support increases in federal technical assistance and funding to foster compliance, we believe that no single agency could maintain the current level of program expertise afforded by multi-department participation . . . the private right of action is the linchpin of the ADA . . . the protection of the fundamental civil rights of people with mental disabilities cannot and must not be exclusively entrusted to an single agency or branch of government . . . a right without an enforceable remedy is not a right at all. **IDEA:** IDEA is a voluntary grant program designed to assist states in complying with their constitutional obligations to provide a free and appropriate education for every child. Any state may avoid the incremental requirements imposed by IDEA merely by declining the federal funds upon which IDEA is conditioned. . . . The IDEA approach to tailoring services to the individual needs of children helps to ensure that wasteful, "one size fits all" approaches do not prevail. IEP's are also designed to provide children with basic skills they need to build a foundation for more independent and productive lives in the community. . . . the civil and constitutional rights of children with disabilities cannot be held hostage to an intergovernmental fight over appropriations . . . compliance cannot be conditioned on such funding. . . . In fact, litigation is not a problem under IDEA . . . Further, leaving enforcement of IDEA to state and local government bureaucracies would give rise to inherent conflicts of interest in every case, especially in these times of tight state and local budgets. . . . Enforcement by the federal government would be either far more expensive than a private right of action (assuming the government actually tried to enforce the law) or completely ineffective, gutting the law in practice.

439

Mary Kay Fleming
4415 Pirates Cove Road
Jacksonville, FL 32210

ADA—I don't understand the state and local governments' problem in enforcing [ADA]. I do agree or can understand why a problem exists at the state and local level when eight (8) federal agencies have enforcement power, i.e. I see a problem of coordination. . . . I agree with most of the recommendation of the ACIR except the sentence that ADA requirements should be temporarily or permanently suspended, or made voluntary, for communities without the fiscal capacity to comply. That seems contrary to the ADA mandate; it is subject to interpretation and allows the mandate to "go to the back-burner." Many agencies can shift their funds to what appeals to them or meets the "desires" of management.

440

David Richard
Executive Director
The ARC of North Carolina
16 Rowan Street, Suite 204
P. O. Box 20545
Raleigh, NC 27619

ADA / IDEA—[These laws] are not to be considered unfunded mandates. . . . The ACIR has not followed its mandate in deciding to ignore the legislation that created it and to use this opportunity to air the political views of its members rather [than] undertaking the task assigned to it. The ADA and IDEA are not creating any undue burdens on the states. In fact, NC already had a similar law before ADA was passed . . . IDEA has opened educational opportunities for children with disabilities that are making it possible for them to live in their communities as productive, tax-paying citizens rather than as expensive dependents with wasted lives.

441

Mr. Jesse Wechsler
2803 Arizona Ave #4
Santa Monica, CA 90404-1528

ADA / IDEA—The ACIR report made several positive recommendations and I thank you for your work. However, it also included misleading and otherwise irresponsibly negative references to ADA and IDEA. . . . ADA and IDEA are not unfunded mandates. They are civil rights. . . . For almost two decades communities have been required by the *Rehabilitation Act of 1973* to make their facilities accessible. . . . We, the disability community, will cooperate 100% to achieve harmonious implementation of the ADA and the IDEA. . . . We call on Congress to provide increased funding that will enable federal, state, and local agencies to fulfill their ADA and IDEA monitoring responsibilities efficiently. . . . You must also realize that no single agency could possibly maintain the level of expertise that provides accuracy and consistency in answering questions regarding the diverse areas covered under the ADA and the wide range of people addressed by it. . . . Increased federal oversight of compliance efforts would be a more effective means of improving enforcement viability, educational dissemination, and technical assistance. . . . The private cause of action must be maintained. . . . The protection of fundamental civil rights must not be exclusively entrusted to any single person, agency, or even branch of government.

442 Nancy J. Bloch
Executive Director
National Association of the Deaf
814 Thayer Ave
Silver Spring, MD 20910-4500

ADA / IDEA—[These laws] are civil rights laws, not unfunded mandates. . . . The *Rehabilitation Act of 1973* has required state and local governments to comply for two decades. . . . The ADA and IDEA contain flexible requirements that do not place and unreasonable burden on state and local governments. . . . Legal action to remedy non-compliance must be available to protect citizens against unfair government practices. . . . Every person in this nation has a vested interest in the success of ADA and IDEA. . . . Temporary or permanent suspension of ADA Requirements or making them voluntary is not the answer. . . . Emphasis on education and training via appropriations for technical assistance and improved enforcement is needed. . . . We insist that the final report be properly corrected, and that the public media be informed of these corrections. . . . We call on Congress to provide increased funding for ADA and IDEA implementation.

443 Ms. Jayne Ahrens
512 North 42nd Street
Seattle, WA 98103-7202

ADA—Blue Postcard [See Comment #182]

444 Dwight R. Stenbakken
Legislative Director
League of California Cities
1400 K Street
Sacramento, CA 95814

General / FLSA—Your report is exceedingly ambitious and sweeping. I commend the thoroughness of the report as it identifies some of the most costly and difficult mandates we as local agencies currently face. . . . Rather than commenting on all fourteen mandates, I will focus our comments on the mandate California cities collectively agree to be the most costly and problematic of the identified mandates from the report. *FLSA*: FLSA has added huge costs in local government employee overtime compensation. Moreover, the federal intrusion into the relationship between local employee and their governmental employers has proven to be difficult and problematic. Regulations promulgated by the Department of Labor (DOL) has diminished the fiscal ability of governments to control local employee costs. DOL involvement has greatly increased the potential liability of local government employers who have faced multi-million dollar lawsuits for years of overtime pay. In short, FLSA was never designed to apply to the unique characteristics of government employment. . . . The League . . . applauds the efforts and the direction of ACIR's report. The recommendation regarding the FLSA is just one of many federal mandates which should be revisited and revised.

445 Warren L. Dean
Coalition Against Fleet Mandates
c/o Dyer, Ellis, & Joseph
600 New Hampshire Ave., NW Suite 1000
Washington, DC 20037

Energy Policy Act—The Coalition strongly urges ACIR to include the *Energy Policy Act* alternative fuel fleet mandates in the final report on unfunded mandates as a mandate to be repealed or modified.

446 William (Bill) A. Moyer, CAE
Executive Director
Oklahoma Municipal League, Inc.
201 NE 23rd Street
Oklahoma City, OK 73105

General—I commend you and other members for making these recommendations and want you to know that, on behalf of the Oklahoma Municipal League and its members cities and towns, we hope that you will continue forwarding these recommendations without change to the U.S. Congress for their consideration and action.

447 Russell C. Spearman
Executive Director
Idaho State Council on Developmental
Disabilities
280 N 8th, Suite 208
P. O. Box 83720
Boise, ID 83720-0280

ADA / IDEA—Although there are some positive recommendations regarding a selected group of existing federal mandates, the Commission clearly lost sight of its defined activity with regard to IDEA and ADA. [These laws] are not unfunded mandates; they are civil rights laws. The recommendation that individuals with disabilities or family members on their behalf should not have the right to initiate legal action when their rights have been denied or weakened is disturbing, as it suggests weakening the fundamental equality we all share under the Constitution. It is critical to provide resources to inform and educate all citizens with regard to their roles and responsibilities under the laws. Therefore, the Council will continue to urge Congress to provide funding that will enable federal, state, and local agencies to fulfill their responsibilities to monitor and enforce laws. FYI, Idaho has been successful in utilizing other funding sources, such as Medicaid, to assist public school programs in providing services and supports to children with disabilities who qualify for special education services under IDEA.

Tom O. Sachs, AIA
Chairman, ACPD
Alexandria Commission on Persons with
Disabilities
Administrative Unit # 1
2525 Mt. Vernon Ave
Alexandria, VA 22301

ADA / IDEA—Both are civil rights statutes affecting more than 49 million Americans, or approximately 20% of the US population. **IDEA**: We strongly support increasing the level of federal appropriations for the IDEA to the maximum authorized. Each state is responsible for providing educational opportunities for its citizens. The IDEA confirms that those citizens with disabilities are part of the state's obligation. . . . Withholding of federal funds is one way of providing incentive to the localities to comply with the requirements of the legislation. It is simpler and more effective than using the courts to monitor the implementation programs. . . . In fact, the IDEA has proven not to be a litigious law. . . . We favor the continuation of alternative dispute resolution on a voluntary basis and we do not question the value of out of court resolutions to disagreements. Alternative dispute resolution is, however, an alternative. . . . Finally, the IDEA was enacted in its original form more than twenty years ago. The time has long past for local jurisdictions to implement the requirements. . . . **ADA**: [This law] is an extension of two earlier legislative initiatives: Title V of the *Rehabilitation Act of 1973* and the *Fair Housing Act of 1988*. It can be extremely difficult to obtain technical assistance in implementing certain of the ADA's requirements. We support ACIR's recommendation that the federal government provide increased technical assistance to state and local governments, but also strongly recommend that this service be made available to the general public as well. . . . Because DOJ and EEOC are best suited to respond to violations of civil rights, they are charged with addressing complaints under the ADA. With the wide range of issues encompassed by the ADA, enforcement has been assigned to those departments and agencies best equipped to address the complex technical provisions of the legislation. We do not see this as inappropriate or burdensome. . . . One of ADA's strengths is its correlation of responsibility and resources. . . . It allows flexibility in solutions to making facilities accessible to persons with disabilities. . . . Local jurisdictions are required to use ADA Accessibility Guidelines only until they develop their own guidelines and have them certified by DOJ. . . . Protection of the intended benefactors of ADA would be better and more swiftly served if they did not have to rely on the U.S. Attorney General to instigate legal action. . . . It is shortsighted indeed to try to cut costs for states and localities by weakening laws which ultimately reduce the need for the far more expensive options of institutionalization and dependence.

449 R. Scott Bergey
Executive Director
The ARC of Wyoming
P.O. Box 2161
130 North Ash
Casper, WY 82602

ADA / IDEA—These are fundamental civil rights laws; not unfunded mandates. Furthermore, there are specific provisions in these laws that prevent them from creating undue burdens on business or state and local governments.

450 Hester and Curt Jensen
[No Address]

IDEA—[Modified version of #123] from the mother of two special education children. Personal comment says: My husband and I have fought for over four years to help our boys get an equal opportunity in school so they can be productive adults.

451 Teresa Giuliani
73 Berlin Avenue
Southington, CT 06489

IDEA—[See Comment # 123]

Sen. Manuel "Lito" Pena, Jr.
 Sen. Diane Watson
 Rep. Jan Schakowsky
 Del. Salima Siler Marriott
 Rep. Elizabeth Townsend
 Rep. Sharon Treat
 Rep. Lynne Martinez
 Rep. Joan Bray
 Rep. Pat Dougherty
 Rep. Charles Quincy Troupe
 Sen. Liz Stefanics
 Rep. Andrew G. Maragos
 Sen. William P. Fitzpatrick
 Rep. Gilda Cobb-Hunter
 Rep. Debra Danburg
 Rep. Dawna Dukes
 Sen. Rodney Ellis
 Rep. G. Spencer Coggs
 Rep. Antonio R. Riley
 Center for Policy Alternatives
 1875 Connecticut Ave., NW, Suite 710
 Washington, DC 20009

General / FLSA / OSHA / FMLA / FMLA—Oppose preliminary recommendation to exempt state and local governments from complying with seven critically important occupational, health, and safety protections. Report conveys false sense of balance by recommending exemptions for seven of reviewed laws, while recommending that seven others be retained with modifications. Many of these modifications amount to "no money, no mandate," which in times of reduced federal spending are actually further exemptions. Ironic that in same month Congress began abiding by the laws faced by other employers, ACIR would recommend exempting state and local governments.

Consortium for Idahoans with Disabilities
 P.O. Box 4185
 Pocatello, ID 83205-4185

ADA—CID and members will work with all entities and individuals covered under ADA to promote voluntary compliance and implementation of ADA. Report fails to address fact that entities receiving federal funds have been subject to similar requirements under Sect. 504 since 1977. Program accessibility provision of ADA states that not every facility or building of a state or local government need be fully accessible. Statute requires that programs when viewed in their entirety be accessible. When a judgment is made against a state or local government under ADA, resolution is typically limited to measures intended to end specific discriminatory practice or situation—not to punish offenders. Agree with increased availability of technical assistance. Suggest that efforts be made to retain and strengthen existing NIDRR-funded nationwide network of Regional Technical Assistance Centers. In the event that federal funds for retrofitting of existing facilities become available, CID opposes any allowance for exemptions when funds are unavailable.

454 Pat D. Westbrook
Texas Commission for the Blind
4800 N. Lamar Blvd
Austin, TX 78756

ADA / IDEA—Do not alter implementation of laws.

455 Sen. Manuel Pena, Jr.
Arizona State Senate
Capitol Complex, Senate Bldg.
Phoenix, AZ 85007-2890

General / FLSA / OSHA / FMLA—[See Comment #452]

456 Joel N. L. Shusman
137 Downey Drive
Manchester, CT 06040

IDEA—States and LEAs cannot absolve themselves of the responsibilities to guarantee each child a free and appropriate education and parents should not have legal remedies denied to them.

457 Francie Moeller, President
ADA Compliance Services
P.O. Box 2686
Guerneville, CA 95466

ADA—Rural areas are harder hit in lack of compliance than cities, inasmuch as funding is being applied first to urban areas while ignoring rural needs. In many cases, there are multiple service providers in urban areas, but none in rural. Because there are many specialized areas, any single agency would have to be an expert in all areas. DOJ has backlog of over 3000 ADA complaints that they are unable to even address, due to limited staffing. EEOC in California has turned to giving Right to Sue letters immediately, because the cannot keep up with the workload. Since state attorney generals are not required to force compliance with federal law, the individual is left with no alternative but private action.

458 Jeanne Landry Harpin
71 Old Coach Highway
Hamden, CT 06518-2059

IDEA—[See Comment #123]

459 Brad Jacobsen
Chinook Energy
4429 Portland Ave.
Mas, MN 55407-5547

ADA / IDEA—[See Comment #154]

- 460** Donald G. Morrow
420 W Belmont #22-E
Chicago, IL 60657
- 461** Arlen D. Finke
Rita Finke, et al
516 Perkins Ave
Danville, KY 40422
- 462** C.J. Webster, City Manager
City of Port Lavaca
P.O. Box 105
202 N. Virginia
Port Lavaca, TX 77979
- 463** Anne and Michael Debraggio
7 Hamilton Place
Clinton, NY 13323
- 464** Gerard E. Egan, Chairman
State of Connecticut
Sheriffs Advisory Board
84 Wadsworth Street
Hartford, CT 06106
- 465** Theresa Rebborn
9215 Okla Drive
Fairfax, VA 22031
- ADA / IDEA**—No “local option” law. Reasonable leeway should be allowed for many provisions, particularly time extensions for final implementation.
- ADA / IDEA**—[This is a pre-printed form letter (petition format) signed by 11 persons.] The form says: **IDEA YES! ADA YES! ACIR Report NO!** We the undersigned, insist that respect for those with disabilities and those elected officials who granted them their long awaited rights by honored. Do not make ADA a “local option.” Do not water down ADA and IDEA! Our full participation as first class citizens is at stake! **NOTE:** the back of the form gives instructions for where to mail the comment and says: “ACIR will make their recommendations to Congress and the President by March 22nd!! Don’t delay, get angry, get active! Your civil rights are at stake!”
- General / Environmental**—Heartily concur and implore ACIR to press both Congress and the state legislatures to amend their ways. Community of 12,000 getting hit on regular basis for very expensive mandates. Most is passed on to residents through water rates. Residents have seen water, sewer and garbage rates double with no real improvement in service. Unconvinced mandates have any real health or welfare value to citizens. Half of money goes to federal mandates. [Memo to Port Lavaca City Council enclosed with letter]
- ADA / IDEA**—Oppose recommendation regarding private right of action.
- General / FLSA / FMLA / OSHA**—Support recommendations.
- ADA / IDEA**—No question that special education money can be spent more wisely. Parents do not frivolously file for hearings or pursue court action.

- 466** Leta Jo Maue
168 N 11th Street
Sunbury, PA 17801
- 467** Michelle Margea
Alpena Holiday Inn
- 468** Lorraine H. DeFreitas
21 Hansen Drive
Vernon, CT 06066
- 469** Diane G. Emery
1202 Plantation Drive S
Colleyville, TX 76034
- 470** Mary Keener Beresford, Ph.D.
Disabilities & More Consulting Services
2314 Mossy Bank Drive #5
Sacramento, CA 95833
- 471** Thomas K. Small
Legislative/Systems Advocate
BCID
2044 Ocean Ave, Suite B-3
Brooklyn, NY 11230-7302
- IDEA**—Support recommendation to fund at appropriate level. Classroom teachers are stretched to the max even without those with disabilities.
- IDEA**—I believe that IDEA is so vital to children with disabilities as the civil rights laws are to protecting the rights of racial and ethnic minorities and women. . . . The IDEA has helped children with disabilities become strongly educated adults in today's society. Parents are the strongest and best advocates for children with disabilities. Please help ensure that our children will be allowed a fair education.
- IDEA**—[See Comment #123]
- ADA**—DOJ cannot handle its caseload under Title II. DOJ has advised this respondent several times to file a private suit in federal court against the State of Texas. Respondent cannot do this because she is too poor.
- ADA**—Civil right, not an unfunded mandate.
- ADA / IDEA**—Fact that the law recognizes that judges are capable of exercising judgment based on their personal experiences as to what is “reasonable” is the strength of the ADA. Congress considered this an important element in the legislation otherwise they wouldn't have vested the judiciary with this significant power.

472

Stanley E. Kolbe, Jr.
Director, Legislative Affairs
Sheet Metal and Air Conditioning
Contractors' National Association, Inc.
4201 Lafayette Center Drive
Chantilly, VA 22021-1209

Davis-Bacon—ACIR proposal would do extreme damage to underlying purpose which encourages quality construction as well as providing employee skill training, health care and pension benefits. Continuing federal commitment to requiring payment of prevailing wages and benefits should not be cast as a union vs. nonunion. 71% of DB projects pay less than the union wage. Prevailing wage laws seek to prevent the federal government from undermining local economies and prevailing local employment and training practices. When productivity, quality of workmanship and life cycle costs of construction are taken into consideration, it becomes apparent that the prevailing wage law is not only not costing government money, but may actually be saving money. Higher wages do not necessarily increase costs—if these differences in wages were offset by hiring more skilled and productive workers not additional construction costs would result. More than half of major private construction is awarded based upon a negotiated rather than a low-bid basis for this very reason—costs are not true indication of overall cost or quality of construction. Would support legislation to: (1) Increase threshold to \$100,000 on new construction and to \$25,000 on maintenance, modernization and retrofit contracts. These limits, which would be annually indexed for inflation adjustments, exclude majority of projects currently covered by DB. (2) Modify reporting requirements to require quarterly, rather than weekly, certified payrolls, including listing of fringe benefit fund contribution recipients.

This change would cut paperwork by more than 93%. (3) Amend to cover defined on-site construction—specifically excluding off-site fabrication and construction, except in the rarest of circumstances. (4) Allow defined use of unskilled helpers and trainees. (5) Enhance enforcement. Encourage ACIR to endorse federal, state and local statutes that offer incentives for firms providing employee training, health care and pension. [Enclosed report on *Prevailing Wage Laws*]

473

Virginia Shiller
[No Address]

IDEA—Outraged.

474 Juanita Hagemeyer
[No Address]

ADA / IDEA / FLSA / Drug and Alcohol / CWA—Commend recommendation to increase funding for IDEA and retaining 25% federal funds. I don't see any information from other sources besides state and local governments. Unless federal government retains power in some issues we will be back to interest of big business and tax revenue of state will supersede need to insure clean water and air. Should be language in FLSA that if the states do not implement a compensation program plan, then federal FLSA will apply. Many states are based on the "good old boy" practice which puts offender (drug and alcohol) in untouchable status. **CWA**: Stiffer fines and penalties need to be built in to make those that contaminate water bear the cost of cleaning it up. Federal government is too lax in enforcing ADA accessibility guidelines. [Articles enclosed]

475 G. Stankevics
2322 State Street NE
Olympia, WA 98506

ADA/IDEA—[See Comment #57]

476 James R. Baugh
Executive Director
Comprehensive Advocacy, Inc.
4477 Emerald Street Suite B-100
Boise, ID 83706

ADA / IDEA—IDEA: Constitutional requirements and Civil Rights are not "Unfunded Mandates"; we oppose ACIR's proposal to eliminate the private right of action. . . . **ADA**: We agree that technical assistance is valuable and needed for ADA compliance. Providing federal funding for building retrofits would increase compliance and increase accessibility. . . . Designating a single federal agency may not be feasible. . . . Relaxing ADA requirement deadlines will not result in access for people with disabilities. . . . Removing the private right of action for violations by government entities is even less justifiable. A right without a remedy is no right at all. . . .

477 Penny Parkes
174 Rolling Ridge Road
Fairfield, CT 06430

IDEA—[Modified form letter #123] Personal note: Please do not look to save dollars on children who by no choice of their own were born with disabilities.

478 Chris Saporita
Coordinator of Services
981 South Third Street
Suite 102
Louisville, KY 40203

ADA / IDEA—Given the limited ability and willingness of DOJ, DOT, and EECO to pursue discrimination cases to an extent that represents the experiences of people with disabilities in the US, limiting the rights of individuals to sue for compliance with the ADA and IDEA would be disastrous. . . . Covered entities have had over five years to organize a response to the compliance requirements of the ADA and IDEA. In addition, ADA provides that modifications not require and "undue burden" on covered entities. . . . Deadlines for compliance with the ADA must be maintained.

479 Cathy and Don Kennedy
13943 Amanda
Sterling Heights, MI 48313

IDEA—[This is a letter addressed to Senator Carl Levin; ACIR was faxed a copy with numerous other letters from Michigan.] The letter expressed support for IDEA because: (1) it has helped millions of children; (2) the right to a free, appropriate education is a national right; and (3) Parents are the strongest and best advocates for children. The letter urges rejection of ACIR's recommendations on IDEA.

480 Oaklyn School
[No address]

IDEA— . . . a symbolic affirmation without appropriate fiscal resources is rather meaningless, in light of fiscal need reported by school districts around the country. . . . State and local policymakers may have some creative insight into the system change process, but they also face significant pressure to reduce taxes or at least not raise taxes. . . . Although IDEA has been particularly litigious, the requirement for alternative dispute resolution hold more promise to reduce litigation [than eliminating the private right of action] without compromising the principles of IDEA. Elimination of the individual right, especially in view of the recommendation that suit will be brought only by agencies, is troubling. . . . the consideration of IDEA by ACIR seem to indicate that the committee believe that in considering budget priorities in state and local organizations, the priority to serve individuals with disabilities will compete well against other priorities. The legislative history of P.L. 94-142 and IDEA do not support that contention.

481 George A. Brinsko, P.E.
President
Western Coalition of Arid States
1015 18th Street, NW # 600
Washington, DC 20036

General / Environment / ESA—Compliment ACIR on methodology used to evaluate unfunded mandates. Survey of those agencies who deal with the issues daily provided verification that indeed there is a problem. Criteria developed for analyzing issues were equally thorough, producing highly logical recommendations; recommend ACIR to continue to analyze other mandates. CWA, SDWA, and ESA were clearly defined as unfunded mandates with national importance, but with state and tribal differences. Recommendations on CWA directly in line with our recommendations. State government is fully capable of establishing safe drinking water standards. Under ESA, it has long been desire of local governments to have greater role in management and planning decisions affecting listing process; too often, the big brother approach has resulted in medicine that was not good for the illness. Gratified that ACIR recognized that rules treat state and local government employees unfairly and portions of the law should be repealed.

482 Lawrence J. Stempnik, P.E.
Si Metric
12883 Commerce Rd
Milford, MI 48380-1258

Metric—Do not see basis for change. Metric conversion does not cost more or delay projects. Engineering work in metric tends to be more efficient and less error prone. 90% of state transportation departments have decided to abide by 1996 deadline. Substantial costs would not be saved by using 2000 deadline. Only two states have used this extension. Relief provided by waivers and 2000 deadline seem more than adequate to prevent unreasonable costs. Claim that metric plans and specifications may have to be converted back to English is more hypothetical than realistic. Purpose of law is to promote interests of U.S. in all respects. Long term national security is directly linked to changing our isolated and obsolete inch-pound measurement system to metric. Metric conversion is essential to becoming competitive in world trade in all sectors of economy. Auto industry has converted and not looked back. Substantial costs involved in clinging to our obsolete measurement system security blanket. Strongly suggest Option 1 with waivers based on factual problems.

483 Lois Pohl, Director
Missouri Commission on Intergovernmental
Cooperation
Room 430, Truman Bldg
P.O. Box 809
Jefferson City, MO 65102

ADA / FLSA / FMLA / General—Most of MO state agencies agreed with ACIR recommendations. Prefer a more moderated approach such as Option 4 to amend FLSA to be more appropriate to public sector conditions and public accountability. Do not recommend removing state and local governments form all provisions of FMLA but rather amend Act to recognize public accountability aspect. Additional rules added in 1995 add cost in the form of record-keeping requirements that go beyond the law. ADA should be retained in present form except that there should be one federal enforcement agency like FLSA and FMLA.

484 Becky Norton Dunlop
Secretary of Natural Resources
Commonwealth of Virginia
Office of the Governor
P.O. Box 1475
Richmond, VA 23212

General—Sting support for ACIR recognition that these costly, burdensome requirements are undermining fiscal health of the states. State and localities compelled to pay for expensive programs emanating from Washington more often than not at the behest of some special interest constituency that has little or nothing to do with the state or locality in question. State and local governments are forced to raise taxes to pay for what the central government desires and mandates but is unwilling to take financial responsibility for. Applaud ACIR for inventorying the vast scope of the problem and for its explicit recognition that states have not been complaining groundlessly about being exploited. Fine step in genuine reform. Urge ACIR to stand firm behind its preliminary conclusions.

Governor Pete Wilson
State Capitol
Sacramento, CA 95814

General/Immigration/Davis-Bacon/Drug & Alcohol/Boren/OSHA/SDWA/Metric/FSLA—
ACIR recommendations positive direction of *Unfunded Mandates Reform Act*. Rolling back overly burdensome existing mandates is even more critical part of rejuvenating American federalism and restoring a fair measure of state sovereignty. Hope ACIR report will serve as impetus for initial legislation action toward such ends, and not be interpreted as simply a listing of representative mandates. Disappointed that ACIR did not address tremendous costs to provide federally-mandated services to illegal immigrants. No question that case of illegal immigration, federal government has failed CA twice over: First, in failing in the exclusive federal responsibility to control the border, and Second, in requiring state taxpayers to reward illegal immigrants with public benefits. CA alone will spend more than \$2.8 billion this coming fiscal year to provide public services to illegal immigrants. Cost of ACIR chosen mandates pale in comparison to those of illegal immigration. Hope ACIR will include in final report an increased emphasis on responsible state actions taken independent of federal prods or threats. Those interests supporting federal mandates argue that states cannot be trusted to safeguard public welfare. States have long demonstrated capacity to enact needed laws with methods and motives targeted toward each states' individual circumstances. Encourage ACIR to include examples of state laws that exceed federal mandated requirements as testimony to the responsibility and independent initiative of state governments. Support ACIR focus on reforming and repealing mandates rather than simply suggesting increased funding. While new funding is not realistic, fortunately it is also necessary. *Drug & Alcohol*: Oppose repeal because federal requirement placed on private as well as public sector. Support Option 1 to the extent that state and local governments have identified the mandate as being too expensive relative to potential protections provided, they should seek and be afforded same range of flexibility to establish an appropriate cost/benefit for these mandates as is provided to private industry. *Boren*: Support outright repeal. This will allow states greater latitude in implementing reimbursement rates and relieve them of the administrative burden of preparing findings and assurances to support their rates. Only option guaranteed to prevent the ongoing interference of the courts in establishment of reimbursement rates. Option 1 not acceptable. Amending *Civil Rights Act*, in Option 3, would not eliminate vagueness of statute or actual Boren requirements. *OSHA*: Repeal allows greatest flexibility for participating state and local governments to develop innovative approaches to ensuring that their public sector employees are protected from workplace safety and health hazards which are unique to their state or locality. OSHA results in disparate treatment of participating and non-participating states and stifles programmatic innovation among state and local governments. Even under the "do it like the federal executive branch does it" option, participating states are still left with no statutory flexibility to develop new non-federally-based

485 Governor Pete Wilson (cont.)

workplace programs. *Davis-Bacon*: Interests of taxpayers and government efficiency would be better served by repealing entirely Davis-Bacon and related acts. *SDWA*: Senate amendments would move toward long-term goal of giving state's full responsibility for drinking water standards. *Metric*: Repeal will prevent CA form having to spend millions of dollars per year in additional project costs, and allow state and local governments and the marketplace to derive appropriate weights and measures for their various construction projects. *FLSA*: Support repeal. Option 4 could be adopted to change specific parts, relieving state and local governments of some of more difficult problems facing them. State and local governments should be exempt from awards for liquidated damages.

486 Emory R. Rodgers
Building Official
Arlington County, Virginia
Department of Community Planning,
Housing and Development, Inspection
Services Division
One Courtroom Plaza, Suite 804
2100 Clarendon Blvd
Arlington, VA 22201

ADA / General—Request inclusion of Building Officials and Code Administration International, Inc. (BOCA) model codes and standards on accessibility be deemed as equivalent and certified by DOJ for compliance with ADA. State and local building code departments have to deal with accessibility issues daily. Final report of ADAAG Advisory Commission will bring forth ADA clarity, removal of non-mandatory language; incorporation of new commentary language; and model code based text, format and scoping provisions. Many areas of ADA now fraught with interpretative issues voiced by owners, advocates, designers and enforcers were addressed in a consensus format. Jim Martin (NGA) observed that a common rule of law procedure available for DOJ to expedite certification procedures be used. DOJ needs to provide additional training and education. Certification offers a safe harbor from possible charges of overt or intentional discrimination against the builder or owner from individuals. UFAS, another federal accessibility standard, should be added to inventory.

487 Shirley A. Pacetti
2601 Bellefontaine A-301
Houston, TX 77025

ADA \ IDEA / FMLA—ADA: Ideal solution would be allocated federal funding. Laws that affect people are passed without funding mandates, and then local and state governments take the path of no funding as their means of not complying. *IDEA*: Federal funding should be increased to minimum of 40% or states need to be relieved from prescriptive and costly administrative mandates. Cannot continue to expect school districts to have children with severe disabilities in a regular classroom without the teacher having aides to help them teach and handle routine problems that occur with children with severe disabilities. *FMLA*: Law should stand as is.

488 no signature
no address

ADA—[See Comment #182]

489 James J. Sheedy, President
NY State Public Employees Federation,
AFL-CIO
1168-70 Troy-Schenectady Rd
P.O. Box 12414
Albany, NY 12212-2414

FMLA / FLSA / OSHA—ACIR assertion that FMLA contradicts state and local government laws does not, if true, present a problem to a smooth administration and application of the law by the states. Thankfully the law is inflexible. Like all good laws, such as ADA, it was not designed to be flexible. It was designed to ensure that the rights protected by this law are not compromised in any manner. Any increase in productivity of employees covered by this law is well worth the minimum amounts necessary for the state as an employer to adhere to the law. ACIR recommendation gives states the authority to determine what action is consistent with FLSA. Taking away individual right to sue under FLSA would take away chief enforcement tool and effectively undermine statute. Regarding OSHA, PEF agrees with written opposition from Service Employees International Union.

490 Theodore A. Nagel
2121 26 Ave., #517
Seattle, WA 98144

ADA—[See Comment #182]

491 Norman B. Rice
Mayor
City of Seattle
600 Fourth Avenue, 12th Floor
Seattle, WA 98104-1873

General/FLSA/FMLA/OSHA/Drug & Alcohol/CWA/ADA/IDEA/SDWA/ESA/CAA/Davis-Bacon—Generally agree with “Common Issues” except for issue related to third-party lawsuits. Although current laws may provide too many avenues for challenging government actions in court, there must be some legal recourse for citizens who believe government has failed them. . . . I cannot support blanket exemptions from such basic employment laws as the FLSA, FMLA, and OSHA. These are basic worker protection laws that apply throughout the entire interstate labor market, within which state and local governments are major employers. The public has clearly stated that no government should not apply one set of rules to the private sector and then completely exempt itself from operating under the same rules. . . . Federal drug and alcohol testing requirements may be necessary to give the traveling public assurance that trains, buses and other public means of travel are safe. . . . I agree with the direction of your draft recommendation regarding the CWA, but it needs to be developed in much more detail to generate a quality public debate. . . . The ADA is a landmark piece of anti-discrimination legislation that was long overdue. While there may be legitimate questions about the reasonableness, cost, and timetables of some public accommodations required under the Act, this nation has a long way to go on removing the barriers to accessibility. The draft recommendation and staff working paper recommendation options are confusing as written. It appears that ACIR’s intent is to recommend Option 1 (increase federal funding for compliance) and Option 2 (more flexibility) if federal funding is not increased. . . . I

acknowledge that implementation schedules and requirements need to take into account fiscal capacity and the difference between urban and rural situations, but making accessibility voluntary would be wrong. ACIR's draft recommendation on IDEA also appears to be confusing combination of "increase federal funding or reduce the requirements." The staff working paper does not make clear what mandate relief is being recommended. This needs to be more specific, analyzed and discussed further. . . . I agree with the ACIR draft recommendation supporting many of the changes the Senate has proposed in the SDWA. I disagree, however, with ACIR's suggestion of a long term goal of returning responsibility for the safety of drinking water to states. Concerns about controlling complex chemical contamination of drinking water under state regulation led to the federal intervention, and I see no information that states are now better able to do this. The ESA is very controversial in the Pacific Northwest, and is a very complicated subject. ACIR's draft recommendations are far too general for meaningful comment. What "official role" do you suggest for state and local governments in the management and planning decisions affecting the listing process? . . . This recommendation should have considerably more specificity and analysis if it is to go forward. . . . The draft recommendation on the CAA might be a step in the right direction, but also requires further development. . . . I support the goals of Davis-Bacon related to require paying prevailing wages on projects with federal funds.

Too few jobs for working people pay a decent enough wage to raise a family with a good quality of life. I do agree that paperwork requirements could be streamlined, and it might be reasonable to increase the cost and federal share thresholds that determine on which projects such requirements apply, but I would want to see specific options set out for public comment, especially from those in the construction trades. . . . In closing, I believe ACIR's work should proceed, but with a great deal more specificity, analysis, and public comment. . . . I suggest you recommend smaller, more narrowly targeted steps that have more likelihood of gaining consensus support, and do not generate such concern about abandoning important strides we have made as a nation.

Gary L. Spielmann
 Executive Deputy Commissioner
 New York State Department of
 Environmental Conservation
 50 Wolf Road, Room 608
 Albany, NY 12233-1010

ESA / CAA—[We] object to the implication, in the ESA recommendation, that “valuable economic development activities . . . are being impaired by strict federal regulation” [We] traditionally have worked [with U.S. Fish and Wildlife Service] in a collaborative fashion, consistently including private interests in our efforts to protect species. We therefore do not believe that more exemptions to the Act are needed. We concur, however, with the first sentence of this recommendation, which [says] state and local governments be given an expanded official role in the management and planning decisions affecting the listing process. [Regarding the CAA,] we have traced a significant portion of the state’s continuing air pollution problems to long range transport from other states. In this regard, we do not believe that the CAA has served us well. In fact, earlier this week New York’s Governor and Attorney General filed suit against the federal EPA, because that Agency’s decision to loosen air pollution standards for four midwestern states inevitably will contribute to the serious air quality problems from which NY and other northeastern states already suffer. On that basis, we must object to the wording of the CAA recommendation, and encourage you to redraft it to acknowledge the critical impacts of long range transport of pollutants.

Claire P. Gutekunst
 Chair
 Committee on Women in the Law
 New York State Bar Association
 One Elk Street
 Albany, NY 12207

FMLA—If the ACIR recommendation is accepted, state and local government employees will receive less protection than that enjoyed by federal or private sector employees. This recommendation ignores the fact that the FMLA has acted as a safeguard for state and local government employees as well as federal or private employees, many of whom did not have such coverage before FMLA. . . . a random-sample statistically significant survey of private businesses found that 76% of employers found it easy to comply with the additional recordkeeping, and 93% experienced only a small increase or no increase at all in the cost of continuing benefits during employees’ FMLA leaves. . . . [Further, regarding the provision concerning two spouses employed by the same employer,] . . . far from adding cost to employers, this provision is designed to protect employers from losing the services of two employees, for the same reason, within a 12-month period. . . . We urge the ACIR not to adopt its preliminary recommendations that Congress repeal provisions of the FMLA pertaining to state and local governments.

494

Mike Rainie
5106 W Strong Street
Chicago, IL 60630

Misc.—The real wasteful laws [that] should [be] dump[ed] are: anti-adult prostitution / sex laws and anti-pot smoking law. Laws [we] need and make stronger [are laws to] stop sweatshop labor for wage poverty. . . . Better U.S. labor and minimum wage laws, workplace fairness act, \$8.00/hour adult minimum wage with two years or three years of cost of living adjustments law for all of U.S. Improve enforcement of environmental laws, overpopulation awareness and education. The Robin Hood Act law—stop rich from [stealing] from poor in government anti-poverty programs. [Eliminate] Wasteful spending priorities [and] do away with: U.S. bases in England, Japan, France; Star Wars project, corporate welfare and tax cuts for the rich. I want to urge ACIR support [for] these proposals of mine which work in Europe. [Also,] support funding mass transit and give U.S. land back to American Native Indian.

495

William L. Rukeyser
Communications Office
Audubon Society/Bay Area Chapters
926 J Street, Suite 612
Sacramento, CA 95814

CWA / ESA—Regarding the CWA, literally hundreds of cities, counties, and special districts are in the watershed which drains into the Bay and Delta. If the CWA is weakened, as the ACIR suggests, any one of those jurisdictions will be able to make mistakes which will adversely affect everyone who lives downstream. That will include millions of people who call the Bay Area home. . . . Changing the current law, as ACIR suggests, would be an open invitation to local officials to cut corners and send their headaches downstream. . . . Regarding the ESA, the law has proven its value in balancing the needs of people to live in a healthy environment with their needs to work and prosper. Changing the ESA as suggested by ACIR would precipitate a race to the lowest level of habitat protection. . . . There are some issues which demand large scale solutions. The CWA and ESA address two such issues and have enjoyed bipartisan support for decades. They should not be tampered with because of the latest political fad. Lastly, the two acts mentioned above have been effective because of the ability of citizen groups to act as watchdogs. In an era of down-sized federal agencies, it does not make sense to suggest that only the federal government can sue under the provisions of the laws. ACIR's proposal would strip from individuals and groups who have standing, the right to approach the bench for redress of their grievances.

David Yudin
Director
City of Chicago
Washington Office, Suite 404
1301 Pennsylvania Ave, NW
Washington, DC 20004

General / FLSA / Drug & Alcohol / FMLA / IDEA / SDWA—Chicago supports ACIR's efforts to start informed debate on the problem of existing mandates. . . the city recently completed a study of 15 city departments to evaluate the current impact of certain federal unfunded mandates and burdensome regulations. . . the survey found that the cost to Chicago over the next 5 years of those 15 mandates and regulations would be more than \$85,800,000 annually. . . **FLSA:** The City of Chicago supports the exemption of state and local government employers from the provisions of FLSA. FLSA conflicts with local government's responsibility to be good stewards of the public trust and prudent users of tax dollars. **Drug & Alcohol:** Chicago supports the ACIR call for exemption. There is no need for the federal government to mandate its own testing program on local governments without providing funding for costs which exceed the cities own program. **FMLA:** Chicago is supportive of the concept of granting leave for family and medical emergencies, but the city agrees with ACIR that a federal mandate of this nature on local government interferes both with the city's accountability to its taxpayers, and the collective bargaining relationships with its employees. **IDEA:** Chicago supports this law, and carries out its own requirements. We agree with ACIR, however, that the federal government has a responsibility to increase funding to help local school boards comply with this act. **SDWA:** Chicago agrees with the ACIR that the Senate amendments to the Act should be adopted. We believe that a long term goal should include involvement of local governments responsible for providing drinking water in the determination of appropriate standards. . . The preliminary [report] . . . well delineates the impact of federal mandates on state and local governments, and demonstrates the difficulty local officials have in implementing federally prescribed mandates. We applaud ACIR's endeavors to address these complex issues and encourage the Congress to closely consider the recommendations contained in the preliminary report.

David M. Silberman
 (Comments of the AFL-CIO)
 Bredhoff & Kaiser, P. L. L. C.
 1000 Connecticut Ave, NW
 Washington, DC 20036

Davis-Bacon / FLSA / OSHA / FMLA—the AFL-CIO shares in the concerns expressed by the Citizens for Sensible Safeguards in its report *Shirking Responsibility*. . . Four of the ACIR preliminary recommendations are addressed specifically to the workplace and to the rights of working men and women. The Building and Construction Trades Dept., AFL-CIO, has submitted detailed comments on the proposed recommendation to amend the *Davis-Bacon Act*. . . we concur in—and second—the BCTD’s analysis and conclusions. *FLSA, OSHA, and FMLA*: The laws that the report targets establish basic labor standards for all employers, public and private alike and do so on the recognition that all employees—including public employees—are entitled to these protections as a matter of simple justice. . . . Our comments are in three parts: In Part I we briefly trace the evolution of federal minimum labor standards, and of the extension of those standards to public employers. In Part II we show that requiring state and local governments, as employers, to comply with laws of general applicability that apply to all other employers in no sense intrudes on state sovereignty and is essential to establishing the legitimacy of such laws. In Part III we demonstrate that denying public employees the protections of labor standards legislation like the FLSA, OSHA, and the FMLA, would frustrate the purposes of those laws and leave millions of workers without adequate workplace protections. . . . ACIR should retract its preliminary recommendation calling for repeal of the provisions of the FLSA, OSHA, and the FMLA which apply to public employers.

Steve Porter
 American Federation of Teachers / AFL-CIO
 555 New Jersey Ave, NW
 Washington, DC 20001-2079

OSHA—[We] take strong exception to all but the first of the ACIR recommendations (Make no significant change in the law.) ACIR’s second recommendation which proposes that participating state plan OSHA’s have as much flexibility as federal agencies is confusing. . . . In exchange for federal OSHA funding, OSHA requires states to extend coverage to state employees. By contrast, OSHA provides no funding to federal agencies for the development and enforcement of occupational safety and health programs; OSHA only provides consultation services. . . . The third ACIR recommendation to delete language requiring coverage of public employees from state plan OSHA agreements is also problematic. Most state plan OSHA states have found it administratively conducive to operate the public and private sector programs together. . . . If anything, the ACIR should amend its first recommendation to extend OSHA coverage to all public employees in the U.S.

**499 Douglas Putnam
Deputy Director / Research Services
Ohio School Boards Association
P. O. Box 6100
700 Brooksedge Blvd.
Westerville, OH 43086**

ADA / IDEA / FLSA / Davis-Bacon— . . . heartily endorses ACIR's efforts to achieve reduction in the number of federal mandates as well as increased federal funding for continuing mandates. In particular, we support ACIR's call for repeal of local government mandates under the FLSA, and for a higher threshold for construction projects falling under the *Davis-Bacon Act*. We also support ACIR's call for increased federal funding to local governments to meet the mandates of the ADA and IDEA.

Lonnie Davis
Chairperson
Your Seattle Human Rights Commission,
City of Seattle, Human Rights Commission,
700 Third Ave, Suite 250
Seattle, WA 98104-1849

ADA / IDEA—ACIR's recommendations concerning **ADA / IDEA** would be a major step backward, away from basic civil rights protections. These recommendations would also make people more dependent on government by denying them individual access to the courts. We strongly urge ACIR to reject those recommendations. **ADA**: . . . The ADA is already flexible in the sense that it allows each jurisdiction to find its own solution to program accessibility problems. At the same time, the ADA gives some assurance that people with disabilities will enjoy the same fundamental civil rights no matter where they live. . . . [Regarding limits on law suits,] a civil rights law which cannot be enforced is worse than useless. . . . It would be unconscionable for only people with disabilities, of all the groups of people protected by federal civil rights laws, to lose their ability to protect themselves. . . concern of costs [of compliance] is misplaced It is very difficult to separate the expenses caused by the ADA from expenses caused by other laws (e.g. the Rehabilitation Act). . . . There is no simple way to determine what costs are attributable to compliance with state law. . . . Most importantly, however, the cost of compliance with ADA, however great or small, is no more than half of the picture. The other, far more significant element is the cost of non-compliance. **IDEA**: Recommendation 3 (Defer implementation decisions to the state and local governments) & 4 (Eliminate the statutory right of individuals to bring actions or require alternate dispute resolution alternatives before use of due process procedures) would undermine the national commitment to educate all our children. Current law mandates an individualized educational plan developed by the joint effort of parents and school personnel. Federal law does not dictate the content of the plan for any given child. Federal law does require school personnel to follow a prescribed procedure in developing an individualized plan . . . Recommendation 3 would make parental involvement at the discretion of some government official at the very time when our society is trying to encourage parental involvement and parental responsibility. . . . The elimination of a private right of action under **IDEA** will not make state and local governments more sensitive to those concerns. Rather, by insulating those governments from responsibility for providing equality of educational opportunity, Recommendation 4 could all too easily lead to the educational neglect of children with disabilities. State and local school officials need to know that the courts may be looking over their shoulders. Parents need to know that access to the courts gives them an assurance of fundamental fairness in the education system.

NAME & ADDRESS

COMMENT TOPIC

501 Gerald W. McEntee
International President
American Federation of State, County, and
Municipal Employees, AFL-CIO
1625 L Street, NW
Washington, DC 20036-5686
(202) 429-1000

OSHA/FLSA/FMLA—We believe that ACIR has adopted a highly partisan position in this debate . . . Substantively, the ACIR recommendations reflect more the current conventional wisdom of intergovernmental relations than any reasoned conclusions resulting from honest debate. The thinking seems to be that if the federal government is going to reduce the deficit, it will not provide adequate funds for many of the programs that insure a safe environment and safe workplace for Americans. Therefore, states and cities should be free from these requirements. We share your view that adequately funding these programs is the highest priority for Congress and that states and cities in their role as employers should be treated no differently than private citizens. When Congress itself has been moving to provide its employees the protections of the laws it passes, this sudden reversal of policy is somewhat ironic. Providing exemptions for one sector will surely lead to demands for exemptions by the other. In the end, a “race to the bottom” will cause us all to lose the important safeguards we worked for years to enact.

502 Helen C. Raniere
18 Centre Ave.
East Rockaway, NY 11518

IDEA—IDEA is very important to us. Attached is a picture of my daughter, Michelle, age 6. She has Chromosome 18P Syndrome. I'm writing to you regarding . . . the proposed cuts in [IDEA]. It upsets me deeply to hear of these budget cuts proposed for special education. Our district stands to lose between \$200,000 and \$400,000. It is hard enough to be a parent of a disabled child. Please don't ask me to fight with parents of “normal” children for education dollars.

503 Kate P. Wolters
Michigan Developmental Disabilities
Council
State of Michigan
Department of Mental Health
Lewis Cass Building
Lansing, MI 48913
(517) 334-6123

ADA/IDEA/FMLA—On behalf of Michigan Developmental Disabilities Council, I am writing regarding recommended modifications offered by the U.S. Advisory Commission on Intergovernmental Relations to the President and Congress concerning “unfunded mandates.” Michigan Developmental Disabilities Council recognizes the ADA, IDEA, and FMLA as legislation that supports and protects the civil rights of citizens with disabilities. ADA, IDEA, and FMLA provide community supports that enable people with disabilities to enjoy equal opportunity as their non-disabled peers, to live, work, learn, and play in communities of choice. In recognizing the unique purpose of these acts, we do not consider them as unfunded mandates, but rather as mechanisms of federal regulation that ensure equal opportunity for all citizens with disabilities.

CWA/IDEA/ADA/SDW/ESA/Davis-Bacon—The City of Paris concurs with the U.S. ACIR recommended changes to the following laws. . . . Please note our support of these recommendations.

504 Tem Alan Boyd, Council Member
Michael E. Malone, Council Member
Charles Neeley, Council Member
Richard Hunt, Council Member
Aaron Jenkins, Council Member
Charles Fulbright, Mayor Pro
John Bell, Council Member
City of Paris
P. O. Box 9037
Paris, TX 75416-9037
(903) 785-7511

505 Helen M. and Rick Jackson
3290 Imani Dr.
Columbus, OH 43224

ADA—I'm 53 years old and my husband is 49, [and] we just got married [on] Sept. 3, 1995. 30 years ago, it wouldn't have been possible [for people] in our conditions to do get married, but . . . laws and mandates like ADA have made it possible for us to do so. Mayors and officials around the country are trying to weaken the ADA. They site (sic) the ADA as "unfair" and "most troublesome" to state and local government. By the grace of God, I hope that none of you . . . have to find out first hand what my life is like as a disabled person, [but] If [you] had to live [your] lives as disabled., [you] might have a better understanding of our lives and what we go through on a daily basis. The world around us is changing fast, and I'm afraid not always for the good. We can only make progress if we forge ahead, not step backwards. Please don't take away the progress that has been made. You want the world to be a better place for the future generations. We're a part of that future. We deserve our place in society. We didn't ask for these disabilities, and we're not asking for your sympathy. We're asking for our rights as human beings to have a place in this world: not hid[den] in attics as in the past. We're not freaks or burdens, if you give us the tools with which we can build our lives. Life's not fair and I think most of us understand that, [but please] don't make it unjust. Support the ADA to its fulfillment. You could be in my chair.

506 John D. Truesdale
Compliance Coordinator
University of Wisconsin, Whitewater
[No Address or Phone Number Provided]

ADA—I am very disappointed in you recent efforts to weaken . . . ADA. The ADA is designed to bring Americans with disabilities into the economic and social mainstream of America and to reduce dependency on the various levels of government and improve the quality of life . . .

507

Bonnie Shultz
Syracuse University
The Center on Human Policy
School of Education
805 South Crouse Ave.
Syracuse, NY 13244-2280
(315) 443-3851

IDEA/ADA—I am writing . . . about the Commission's recommendations on the ADA and IDEA. These laws have made it possible for millions of children and adults with disabilities and their families to live, learn, work, and in other ways participate in the communities in which they live. They have permitted these individuals to exercise their citizenship, which was effectively denied to them when there were no laws governing access and accommodation to community services and resources. ADA provides well-balanced measures for compliance, including the concepts of "reasonable accommodation" and "undue burden" IDEA has been in effect since the 1970's. Weakening this law in any way would be a tremendous step backwards. I urge you to reject any recommendations that would suspend or eliminate these important federal protections.

508

Monica Murphy
Wisconsin Coalition for Advocacy
2040 West Wisconsin Ave., Suite 678
Milwaukee, WI 53233

ADA/IDEA—I feel I must comment on your proposed changes to both IDEA and ADA. . . they are threatened by your recommendations to limit their abilities to enforce the law. **IDEA:** I applaud your recommendation that federal funding be provided at the 40 percent level authorized in the law to help states and local school districts meet its requirements. Providing a free and appropriate public education is vital to kids with disabilities. While I do not strongly object to your proposal for mandatory alternate dispute resolution (ADR), I believe that it is unnecessary and may only serve to increase costs rather than lessen [them]. I am deeply concerned about your proposal to take the right of court enforcement away from individuals. You suggest . . . that only state or federal agencies have the right to bring court challenges. The truth is this simply will not happen. The fact of the matter is that it is parents and families bringing individual actions that are the enforcement mechanism for IDEA. **ADA:** I am concerned that the civil rights of people with disabilities are being viewed as not worth the cost of protecting. While I do not object to the federal government providing funding to state and local governments to aid in their compliance with ADA, there is no reason to feel sorry for them either. Access to government building and programs should be every citizen's right. State and local governments should be accessible whether the federal government funds it or not. It is impractical to suggest that a single agency be responsible for ADA enforcement and that legal actions against state and local governments be limited to actions brought by the federal government. I urge you to consider carefully changes in laws that affect the civil rights of people with disabilities.

509 Kent Colton
National Association of Home Builders
1201 15th Street, NW
Washington, DC 20005-2800
(202) 822-0200

FLSA/FMLA/SDWA/CWA/OSHA/ESA—The failure of government at all levels to evaluate the effects of their regulations has resulted in burdensome, expensive, and in some cases, unnecessary regulation. NAHB supports the criteria that the Commission used to assess federal mandates. In particular, we believe that mandates that are unnecessarily prescriptive, or that are based on inadequate science, or not justified by adequate cost/benefit analyses should be terminated or modified. Our comments on specific federal mandates identified in the report are as follows. *Clean Water Act*: The Commission has accurately portrayed the excessive costs to state, tribal, and local governments for compliance with Clean Water. Funding, however, is not the only problem, as states and localities also struggle to find the necessary flexibility within the mandates to address not only what the federal government believes is important, but also those issues and sources of pollution that the states/localities have identified as being most problematic in their areas. NAHB believes that the recommendation for CWA should be expanded to both restore federal funding and give states and local governments greater authority to develop control measures and timetables for implementing federal standards for clean water. *Endangered Species Act*: The Report correctly states that the Endangered Species Act impacts significantly state and local governments, without allowing their input into the decision making process. NAHB strongly supports the Commission's recommendation that state and local governments should be given an official role in the management and planning decisions affecting the listing process beyond the sparse requirements currently in effect. [See original letter for more detailed analyses]

510 William Brown
Mayor
City of San Francisco
San Francisco, CA

ADA/IDEA—The Board of Supervisors of the City and County of San Francisco . . . declare[s] its support for ADA and IDEA which recognize the civil rights of persons with disabilities; and . . . urges [ACIR] to not make any recommendations which have the direct or indirect effect of weakening the provisions of the ADA or IDEA.

511 James De Vaney
Nebraska Association of the Deaf
[No address or phone provided]

ADA/IDEA— . . . the Nebraska Association of the Deaf, do[es] not support watering down the fundamental rights of Americans. We support the full implementation of the [IDEA] and [ADA] by National, State and Local Government.

- 512** Verna O'Brien
607 E. Ninth Street, Box 9
Lockport, IL 60441-3613
- ADA/IDEA/FMLA**—I strongly urge you not to repeal the FMLA as it applies to state and local governments, not to eliminate my right to sue state and local governments in order to enforce the ADA and the IDEA. Instead it is my feeling the committee's recommendations should include: full support of the FMLA; maintaining the right of private citizens to sue state and local governments as it applies to ADA and IDEA; and provision of funding to state and local governments to enable them to adequately monitor ADA and IDEA compliance
- 513** Karen Wolffe
Alliance of and for Visually Impaired Texans
P. O. Box 341
Manhaca, TX 78652
(512) 280-5792
- ADA/IDEA**—The Alliance wishes to express concern over the recommendations . . . regarding civil rights legislation for people with disabilities. Legislation such as ADA and IDEA have provided individuals in the US who are blind or severely visually impaired with opportunities that previously were denied to them. Children who are blind now are able to receive an appropriate education with sighted age-mates. Their public education gives them the knowledge and skills they need to pursue higher degrees and/or enter the workforce. For the US to be strong and robust, it is imperative that all our citizens work and contribute to society.
- 514** Cheryl Bergan
The Access Center of San Diego, Inc.
1295 University Ave, #10
San Diego, CA 92103
(619) 293-3500
- ADA**—I am concerned with the ACIR recommendations regarding the ADA. Every American should have certain rights and those rights are guaranteed to most individual through the Constitution and the Bill of Rights. For people with disabilities, those rights that others take for granted are guaranteed under the ADA. Those rights are the guarantee of access and employment, the right to redress those wrongs in a court of law. The message that you are sending to the states that have complied and to states that have not is that this law and the people it is designed to protect are not important, that as a state, if you choose to disregard the law, you are not even leaving an individual's right to sue which are the teeth of ADA. I'm asking you to consider very carefully that this law was enacted in the way that it was for a reason—that individuals in and out of the disabled community worked very hard to establish a workable law that was fair to all.
- 515** Tom Lunardini
Mississippi Paralysis Association
P. O. Box 4268
Jackson, MS 39296-4268
366-4369
- ADA**—I . . . do not support watering down the fundamental rights of Americans. I support the full implementation of the IDEA and the ADA by national, state, and local governments.

516 Lynne L. Brown
1615 North West Street
Galesburg, IL 61401-1753
(309) 342-3970

ADA/FMLA/IDEA—I am writing to protest the recommendations outlined in the preliminary report of the Advisory Commission on Intergovernmental Relations. I have been disabled by Multiple Sclerosis. I am dismayed that this commission could . . . recommend the repeal of FMLA as it applies to federal and state governments. I am even more upset that ACIR recommended that disabled citizens be denied the right to sue under ADA and IDEA.

517 Darin Stageberg
P.O. Box 3948
Moscow, ID 83843-1920

ADA/IDEA—ACIR recommends that the ADA provisions be retained but modify implementation elements of the law. I strongly agree with these recommendations. [ACIR] argues that the law should be modified to change its orientation from rigid requirements toward a focus on goals and goal attainment schedules, allowing state and local governments the opportunity to develop their own means for achieving them. I'm open to the idea of negotiation on extending the timelines, but permanently suspending the timelines because of financial hardship or making it voluntary is unacceptable. I strongly disagree that only the U.S. Attorney General has the power to bring all legal action against state and local governments. I agree that a number of absurd cases have been filed on behalf of ADA, and that some of the language in the law is vague and needs to be clarified.

518 Ted James
Planning Department
County of Kern
2700 M Street, Suite 100
Bakersfield, CA 93301
(805) 862-8600

General—In an effort to increase awareness of the ACIR preliminary recommendations, the draft report was presented to the Kern County Board of Supervisors, published on the regular agenda, and distributed to the heads of key County Departments. Overwhelmingly, the comments received focused on the recommendation that Congress should review all mandates, whether already approved or just in formulation, in light of the key [criteria] the Commission used. ACIR should urge Congress to establish a policy that all proposed legislation that has the potential to create a new mandate for State and local government, be evaluated using the Commission's key [criteria].

519 Kevin Dwyer
National Association of School
Psychologists
4340 East West Highway
Suite 402
Bethesda, MD 20814

IDEA—NASP is particularly concerned about the recommendations for the IDEA. The report recommends retaining the provisions of IDEA but examining and modifying the funding structure. IDEA is a federal law that requires that children with disabilities who need special education and related services receive those services without cost. The services must be free and appropriate, and delivered in the least restrictive environment. The report raises concern about the lack of federal funding. Maintaining the provisions of IDEA and relaxing some of the most costly requirements is incongruous. The requirements of IDEA are the requirements. The right of an individual with disabilities to request that the courts rectify an injustice is Constitutional. There is no doubt that mediation is a preferred process and there is substantive evidence that almost all disagreements are settled in this manner.

520 Susan Rohrscher
[No address or phone]

[See Comment #182]

521 Steve L. Christianson
Marshfield Clinic
1000 North Oak Ave.
Marshfield, WI 54449-5240
(715) 387-5240

FMLA—I became quite irritated after reading about state and local governments wanting a special exemption or different treatment under the FMLA. There is no valid reason for government employees to get any special treatment under FMLA that is not also extended to private business.

522 John D. Henirough
[No Address, No Phone]

[See Comment #182]

523 Martin Pion
Missouri GASP (Group Against Smoking
Pollution)
6 Manor Lane
St. Louis, MO 63135
(314) 521-0299

ADA—I . . . request that no change be made in the present regulations in respect of the private right to sue under ADA. Such a change could have a devastating effect on our ability to secure access for those with respiratory disabilities.

524 Abigail S. Howes
20 Haverhill Street, #604
Brockton, MA

ADA—I find [your report] very frightening, as for the first time in my life, I am being treated as a real human being. Although I have multiple disabilities, I have been able to get a college education, hold a part time job, own a motor vehicle and participate as a full citizen, as the Constitution guarantees. Please do not remove our rights to be a free member of our society, or get an education, just because of a disability. Any changes to the ADA would be devastating to an already disadvantaged minority.

525 Don L. Roberts
City of Lewiston
P.O. Box 617
Lewiston, ID 83501

FLSA—Since its application to local governments in the mid 1980s, FLSA has been a minefield for local government officials. Regulations are complex, court interpretation inconsistent, and liability staggering. Smaller towns do not have the personnel to understand the system, larger cities have collective bargaining agreements that cover all management and employee concerns. I endorse the recommendation of the U.S. ACIR that FLSA should be repealed as it applies to state and local governments.

526 Tim Williams
Water Environment Federation
601 Wythe Street
Alexandria, VA 22314
(703) 684-2400

CWA—In general, we support the recommendations in the report regarding the Clean Water Act. WEF supports providing states increased flexibility to implement environmental protection programs tailored to meet their particular needs. We also support the recommendation that federal financial assistance should be continued as an integral part of the state-federal partnership.

We recommend, however, that the report be modified to clarify that there is a federal role in national clean water programs even in the absence of federal funding. We also recommend that greater attention be given to efforts at EPA, particularly the Office of Water, to address specific problems in the state-federal clean water partnership.

527 Virgil L. Just
CAWS
679 Santa Ysabel Ave.
Los Osos, CA 93402
(805) 528-5445

CWA—ACIR recommends modifying the Clean Water Act and will soon have completed a report stating same. The CAWS group in Los Osos, CA totally agree that the CWA must either be modified or dismantled.

528 Gordon P. MacDougall
Rubber Pavement Association
312 Massachusetts Ave., NE
Washington, DC 20002
(202) 544-7111

Recycled Crumb Rubber—The conclusions contained in the “Recycled Use of Crumb Rubber (Repealed)” section of ACIR’s January, 1996 Preliminary Report . . . are both inaccurate and irresponsible. In its report, ACIR neglects to review the genesis of the [RCR] section of the Intermodal Surface and Transportation Act. This provision was adopted to encourage States to build better, longer lasting roads using crumb rubber modifier (CRM) materials. Fifty percent of our nation’s roads are in poor condition. Asphalt pavements in the US have approximately one-half the life span of asphalt pavements in Europe. There exists strong institutional barriers to encouraging States to build longer lasting roads using federal tax dollars. [See attachments for facts and proposed corrections]

529 Charles Williams
Minnesota Pollution Control Agency
520 Lafayette Rd. N.
St. Paul, MN 55155-4194
(612) 296-6300

CWA/SDWA/ESA/CAA—CWA: The CWA protects the nation’s rivers and streams by establishing national minimum standards for treatment and water quality protection. This creates a level playing field and assures that our nation’s rivers and streams will be protected for their designated uses as fisheries, recreational areas, and industrial and drinking water supplies. We do not support changes that would destroy this level playing field. *SDW:* We support the recommendation to enact amendments similar to those approved by the Senate and establish a long term goal of returning to the states full responsibility for safe drinking water standards. **ESA:** In addition to the recommendations provided, we would like to see clarification on the need for consultation on National Pollutant Discharge Elimination System permits issued by delegated states. **CAA:** We support the recommendation to allow states to develop their own ways of meeting federal air quality standards.

530 Julie Hiller
[No Address, No Phone

ADA -- [See Comment #182]

Fair Labor Standards Act: ACIR recommends repeal of provisions of *FLSA* covering state and local government employees. NLC wholly supports ACIR's recommendation. NLC policy states that the *FLSA* "exception for state and local government employees should be reinstated by statute." **Family and Medical Leave Act:** ACIR recommends repeal of the *FMLA* provisions that cover state and local government employers. NLC policy states that NLC opposes the federal imposition of fringe benefit requirements "such as...leave provisions, on municipal employers." NLC supports this recommendation. **Occupational Safety and Health Act:** ACIR recommends repeal of the provisions extending *OSHA* coverage to public employees in participating states. NLC policy states that NLC opposes the extension of federal *OSHA* standards to municipal employers. NLC supports this recommendation. Drug and Alcohol Testing of Commercial Drivers: ACIR recommends repealing provisions making some state and local employees subject to the federal drug and alcohol testing requirements for commercial drivers. NLC does not support ACIR's position, but supports a solution that would use regulatory flexibility in federal transportation policy and programs to help local governments stretch limited resources to meet local needs. NLC's policy reflects ACIR's alternative option #3 in the preliminary report. **Metric Conversion for Plans and Specifications:** ACIR recommends repeal of requirements that state and local governments convert to metric on a federal timetable as a condition of receiving federal aid. Although NLC policy does not specifically address this subject, NLC's general anti-mandates preamble opposes federal mandates that impose costs directly on municipal governments and those that intrude upon the autonomy of local government, and therefore, NLC supports this recommendation. **Medicaid:** **Boren Amendment:** ACIR recommends repeal of the *Boren Amendment*, which makes states solely responsible for determining Medicaid provider reimbursement rates. NLC policy contains no reference to this amendment and, therefore, NLC has no comment on this recommendation. **Clean Water Act:** ACIR recommends either restoring direct federal sharing of costs or giving state and local governments greater authority to develop their own control methods and timetables for implementing federal standards for clean water. NLC policy states that federal participation in the financing of projects mandated by the *CWA* is critical to the ultimate achievement of national water quality goals and that the federal government must continue to expand its partnership with states and localities in the funding of *CWA* mandates. NLC supports the first part of ACIR's *CWA* recommendation as to increased federal funding of state and local clean water act mandates but thinks the second part does not take into account impacts on downstream communities and the likely litigation that would result from variation throughout the country. Also, NLC is disappointed that

ACIR did not address the municipal stormwater federal unfunded mandate. *Individuals with Disabilities Education Act*: ACIR recommends either increasing federal funding to the 40 percent authorized level or relieving states from prescriptive and costly administrative mandates. ACIR also recommends requiring alternative dispute resolution practices and restricting standing requirements to state or federal agencies. NLC supports greater state and federal assumption of responsibility for financing education to special needs groups, including those with disabilities. ACIR's recommendations pertaining to dispute resolution procedures and standing also are consistent with NLC's liability policy statements. NLC supports this recommendation. *Americans with Disabilities Act*: ACIR recommends either increasing federal funding to state and local governments to assist in compliance or modifying some deadlines and requirements to recognize state and local technical and budgetary constraints. ACIR further recommends designation of a single federal *ADA* enforcement and assistance agency to coordinate enforcement and technical assistance. ACIR also recommends that legal action against state and local governments should be limited to actions brought by the federal government. NLC supports this ACIR recommendation. NLC policy supports the establishment of reasonable federal *ADA* compliance deadlines and supports federal funding that will permit cities to achieve compliance as well as program changes that will provide cities and towns with greater flexibility to target scarce resources to meet the needs and priorities of local disability communities. *Safe Drinking Water Act*: ACIR recommends enacting amendments similar to those approved by the Senate and establishing a long-term goal of returning to the states full responsibility for safe drinking water standards. NLC policy states that federal drinking water standards should be based on sound science, public health protection, risk reduction and cost. NLC urges ACIR to include these specific factors in its recommendations. NLC supports the first portion of ACIR's *SDWA* recommendation, but opposes the second portion. Such a recommendation could have the unintended effect of creating another unfunded mandate on state governments. *Endangered Species Act*: ACIR recommends giving state and local governments an official role in the management and planning decisions affecting the listing process beyond the traditional consultation and full notice and comment requirements currently in effect. In addition, ACIR recommends that exemptions to *ESA* should be applied more extensively to minimize social and economic impact on state, local, and tribal governments of recovery planning and listing procedures. NLC policy states that local governments should be more involved when federal agencies develop plans to address endangered species. It also states that, especially in the early rule-making process, federal agencies should ensure that local governments' concerns and input are included. NLC supports this ACIR recommendation. *Clean*

Air Act: ACIR recommends permitting states to develop their own ways of meeting federal air quality standards, and eliminating financial aid penalties if states are making good faith efforts to comply. NLC believes that some national uniformity is necessary to address air pollution effectively. NLC would like the ACIR recommendation to address reforming citizen suit provisions, which operate as a financial penalty on local governments. NLC opposes this recommendation. **Davis-Bacon Related Acts:** ACIR recommends amending *Davis-Bacon* related laws to exempt projects below a larger dollar cost than now prevails and below a certain federal percentage of cost sharing from compliance with *Davis-Bacon* provisions in state and local construction projects. NLC advocates the wholesale repeal of the *Davis-Bacon Act*. **Required Use of Recycled Crumb Rubber:** ACIR recommends repeal of this mandate, which has since been repealed by the National Highway System legislation. NLC policy supports ACIR's recommendation.

William T. Pound
Executive Director
National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, CO 80202

General/Boren/IDEA/CAA/Metric/Crumb Rubber/CWA/SDWA/ADA/FLSA/Davis-Bacon/ FMLA/OSHA/ESA/Drug and Alcohol -- Report furthers public's understanding of problem of mandates. Look forward to assisting in development of legislation to enact supported recommendations. **Boren:** Support recommendation. NCSL believes states should set reimbursement rates in Medicaid program. **IDEA:** Support recommendation. Absent federal contribution at authorized levels, NCSL calls for expeditious and comprehensive administrative relief. **CAA:** Support recommendation. NCSL believes minimum federal air quality standards should be maintained; states should be given maximum flexibility in decision approaches and methods for obtaining compliance. States should have larger role to determine credits for emission reduction. Cost-benefit should be used in transportation control measures. Time deadlines should be contingent upon actual promulgation on implementing EPA regulations. **Metric:** Support recommendation. Withholding transportation funds is wrong; incentives should be used. Volume of waivers shows that its time to rethink. Should be financial support and assistance. **Crumb Rubber:** ACIR on right track. **CWA:** Supports increased funding and restoration of direct CWA grants; should be given flexibility in meeting minimum standards; do not support elimination or weakening of minimum national standards and uniform timetables. **SDWA:** Supports S. 1316; should be minimum federal standards and compliance timetables. **ADA:** Financial support needed. Citizen suit recommendation should be explored. No policy on management of enforcement mechanisms; **ADA** has resulted in decisions to completely eliminate some services. **FLSA:** Opposes recommendation. Support same regulatory and enforcement authority as federal government Support statutory changes regarding salary basis test. **Davis-Bacon:** Should continue wage rates but study changing the floor level of costs or ratio of federal participation. No policy on FMLA, OSHA, ESA, Drug and Alcohol testing. Commend ACIR on work and believe ACIR did not receive funding to do work on more issues.

533 National Association of Towns and
Townships
1522 K St., NW, Suite 600
Washington, D.C. 20005-1202

General/Davis-Bacon/ADA/FMLA/FLSA/OSHA/Drug and Alcohol Testing/CWA/SDWA-
- Generally support recommendations; applaud ACIR's efforts despite the fiscal and personnel constraints. Upset that local government is being referred to as ideological extremists. All acts of Congress are not perfection and to suggest other ways to achieve a goal is not extremism. FLSA: FLSA impacts on voluntary firefighters and payment of overtime to employees who are otherwise professionals. FLSA does not reflect the reality of small communities. State and local governments are best qualified to determine overtime benefits. FMLA: Seems pointless for township with few employees to have to revise its personnel manual to incorporate information on FMLA and to post notices about employees' rights under the FMLA. OSHA: The same exemptions for small businesses should apply to small local governments. Interesting to not that Senate Labor Committee recently approved an amendment to apply OSHA to all state and local governments. *Drug and Alcohol Testing*: Top legislative issue for NaTAT. Many townships may have few or no other employees than those responsible for road maintenance and snow plowing. CDL frustrations buttressed in communities where a township official is a farmer and can drive a large truck on their interstate but not a smaller snow plow on a local road. Drug and alcohol testing requirements a mandate on top of a mandate. Since township road crews only operate in a roughly six mile by six mile township and are not engaged in interstate commerce, it seems overkill to apply them the same requirements that are applied to long-haul truckers. Regulations do not make sense for rural jurisdictions [Examples given.] CWA: Federal cost sharing is needed; State revolving funds not meeting the needs of small governments. Urban areas given the lion's share of funding. Stormwater permitting requirements ask communities to spend a great deal of their own funds to eliminate small threat to water quality. ADA: Supports recommendations. Does not support making ADA voluntary for any community. Support consolidation of interpretation and enforcement within DOJ, DOT, and EEOC. Support major federal funding programs to be used in construction and retrofitting. Support negotiation of compliance schedules. Many of ACIR recommendations are encouraged by DOJ and implemented through various federal and state agencies. [Interview with John Wodatch, Chief Disability Rights Section, DOJ included] SDWA: Support recommendation. Monitoring requirements are onerous. Federal funding not enough to cover the cost of developing and administering a comprehensive waiver program. *Davis-Bacon*: Recommend repeal.

J. Thomas Cochran
Executive Director
U.S. Conference of Mayors
1620 Eye St., NW
Washington, D.C. 20006

General -- Champion the effort to provide relief from mandates. Applaud the inclusion of Title III to authorize ACIR to conduct study. Disappointed that Congress called for dissolution of ACIR and ACIR not provided with adequate funding or full technical support for study; commend ACIR for exemplary work under less than ideal conditions. Some recommendations mirror USCM policy, opposite of policy, or do not address policy. Concerned about organized effort to not improve and refine report where necessary.

Anthony Crowell
 Municipal Policy Analyst
 International City/County Management Ass.
 777 N Capitol St., NE, Suite 500
 Washington, D.C. 20002-4201

General/FLSA/FMLA/OSHA/Drug and Alcohol Testing/Metric/Boren/CWA/IDEA/ADA/SDWA/ESA/CAA/Davis-Bacon/Crumb Rubber -- FLSA: Support ACIR Recommendation Option 4. Support amending FLSA to resolve issues most often subject to intergovernmental controversies (salary basis and duties test; flexible work schedules; inclusion of emergency medical services employees in partial overtime exemption; clarification of inmate coverage; use of employer-owned vehicles without incurring overtime liability. **FMLA:** Supports state and local determination of fringe benefit provisions for public employees in lieu of federally mandated ones. **OSHA:** Supports the use of local research efforts, standard setting, and safety and risk management programs to protect public employees. **Drug and Alcohol Testing:** Opposes ACIR recommendation. Supports optional recommendation for regulatory flexibility; supports federal efforts to support safety of nation's transportation networks; supports federal technical assistance to local governments that establish substance abuse testing and treatment for employees, including certification. **Metric:** Supports ACIR recommendation. **Boren:** Supports alleviating federal burdens on states that may impact availability of funding for other critical state and local programs. **CWA:** Supports ACIR recommendation concerning federal funding. Opposes ACIR recommendation regarding giving state and local government greater authority to develop their own control methods and timetables for implementing federal standards. **IDEA:** Supports ACIR recommendation, but urges increased funding from states as well as federal government. **ADA:** Supports ACIR recommendation, but urges the need for reasonable and flexible compliance schedules as well as funding. **SDWA:** Support ACIR recommendation to adopt provisions similar to Senate bill. Supports Option 2 as an alternative recommendation. **ESA:** Supports recommendation but urges increased scientific decision making process. **CAA:** Opposes ACIR recommendation. Supports national uniformity measure; supports increased state flexibility to meeting air quality standards. Urges ACIR to recommend reform of citizen suit provisions. **Davis-Bacon:** Supports ACIR recommendation. **Crumb Rubber:** Support ACIR recommendation.

Governor George V. Voinovich
 Governor E. Benjamin Nelson
 National Governors' Association
 Hall of the States
 444 N. Capitol St.
 Washington, D.C. 20001-5300

General/IDEA/SDWA/CWA/ESA/CAA – Strongly commends ACIR for work. Urges push forward in continuing examination of mandates failing tests: 1. Is mandate unfunded or underfunded? 2. Does regulatory mandate go beyond basic law. 3. Are cost disproportionate to benefits? 4. Is mandate inappropriate “one-size-fits-all” mistake? 5. Does mandate hurt market competition? 6. Does mandate create excessive and multi-layered overhead costs? 7. Does mandate distort top priorities of state and local government? 8. Does mandate give an undue preference to single interest over public interest? 9. Does mandate preempt existing state law? 10. Would state or local action be cheaper or more effective? *Boren Amendment* should be repealed. NGA does not support repeal of *FLSA*, *FMLA*, or *OSHA* but supports significant revision. *IDEA*: Strengthen recommendation to allow local education agencies to use up to 10% of IDEA funds from other categorical programs more flexibly and allow disciplinary policies to conform with state law. *SDWA*: Strengthen recommendation to 1) repeal requirements for EPA to regulate 25 new contaminants every 3 years; 2) require EPA to conduct cost-benefit before establishing standards; 3) identify technologies appropriate for small water systems; 4) allow states to modify monitoring requirements; 5) authorize new state revolving fund. *CWA*: Strengthen recommendation to 1) give states flexibility to address nonpoint sources of pollution within defined reasonable period; 2) authorize use of new stormwater permits that promote use of best management practices; 3) provide incentives to states to utilize watershed-based management approach; 4) Authorize at least \$2 billion/year to capitalize SRF. *ESA*: Strengthen recommendation to 1) identify and create stable funding source; 2) provide incentives for species protection; 3) include states in collaborative rulemaking exempt from FACA; 4) authorize states to create expedited recovery planning process minimizing economic and social impacts. *CAA*: Strengthen recommendation to ensure 1) states have primary responsibility for control of air pollution; 2) states do not face unrealistic deadlines and sanctions; 3) state implementation plan review is timely; 4) flexibility of air pollution control implementation; 5) additional resources to assist states. [Urges ACIR to add recommendations on the following: Resource Conservation and Recovery Act, Regulatory Reform, Immigration and Refugees, Student Loan Defaults, Foster Care Requirement, Deinstitutionalization of Status Offenders/Separation of Juveniles, Tobacco Sales Prohibition, HIV Testing of Convicted Sex Offenders Requirement, Early and Periodic Screening/Diagnosis/Treatment, and Qualified Medicare Beneficiaries.]

Reginald N. Todd
 Legislative Director
 National Association of Counties
 440 1st Street, NW
 Washington, D.C. 20001-2080

General/FLSA/FMLA/OSHA/Drug and Alcohol testing/Metric/Boren/CWA/IDEA/ADA/SDWA/ESA/CAA/Davis-Bacon/Crumb Rubber -- Commend ACIR on report. **FLSA:** Recommends rewriting FLSA regulations to relieve state and local government from retroactive liability for overtime; update standards for determining who is entitled to overtime pay; modify rules on suspensions without pay; permit paramedics to qualify for "7K" exemption; waive overtime pay requirements for public employees who desire to volunteer their service in response to emergencies. **FMLA:** No policy but urges federal reimbursement for all costs association with complying with federal mandates. **OSHA:** NACo policy calls for federal reimbursement of local government for all cost associated with complying with mandates. State and local government should be given option to participate in federal OSHA program on a voluntary basis or be permitted to develop own program. **Drug and Alcohol Testing:** No policy but urges federal reimbursement to local governments for all cost associated with complying with mandates. **Metric:** Supports ACIR recommendation. **Boren:** No policy. Counties have expressed concern that repealing amendment and giving states sole responsibility for determining rates could lead to reduced reimbursements to county health facilities. NACo policy on Medicaid strongly opposes cost shifts from federal and state government due to changes in Medicaid. **CWA:** NACo policy supports federal funding to meet all CWA mandates imposed on counties; supports standards for water quality that are cost-efficient and based upon scientifically sound and consistent assessments of health, safety, and environmental risk; supports local government involvement in development and implementation of all plans under CWA; supports local government flexibility, extensions of time, and ability to use alternative methods. **IDEA:** No policy, but urges federal government to reimburse local government for all cost associated with complying with mandate. **ADA:** No position, but urges federal government to reimburse local government for all cost associated with complying with federal mandates. NACo policy calls for increased flexibility to allow local government to use least costly regulatory alternative that accomplishes legislative objectives. **SDWA:** Supports ACIR recommendation. **ESA:** Supports ACIR recommendation. **CAA:** Supports cooperation with states and localities to formulate guidelines; supports technical assistance programs; supports federal leadership for an open objective process to ensure that clean air is attained in a cost effective fashion; supports vigorous enforcement of the Act; supports continuance of receiving funds directly from federal government; supports federal funding for start-up costs of inspections and maintenance programs; supports financial assistance in land use and transportation planning. **Davis-Bacon:** Supports ACIR recommendation. **Crumb-Rubber:** Supports ACIR recommendation. [Urge ACIR to add RCRA to analysis.]

Judith L. Lichtman, President
Women's Legal Defense Fund
1875 Connecticut Ave., NW, Suite 710
Washington, DC 20009

FMLA -- Categorically opposes ACIR proposal. The first and most serious flaw is total absence of scientific methodology ... failed to offer any facts or statistics in support of claims....report appears to be based solely on unsupported conclusions. ACIR fails to offer any reasonable justification for its recommendation to repeal provisions of FMLA. Contrary to ACIR's conclusion, a compelling national purpose justifies FMLA's application to state and local governments. Prior to FMLA in 1993, a large number of employers, including state and local governments, did not provide employees with any job security during periods of family and medical leave. Prior to FMLA many state employers provided some kind of leave option for employees but job-guaranteed family and medical leave was not established as a universal labor standard. Each year, 1-2 million employees can be expected to use FMLA. (Attached to comments are summaries of experiences of 9 state and local employees who have relied on the FMLA when their families' needs demanded.) ACIR's claim that FMLA imposes too many administrative costs on employers is completely flawed. New scientific research by the Family Leave Commission on costs associated with business compliance with the FMLA establishes a very different picture. (Highlighted in pie charts attached to comments.) State and local governments had even more extensive family and medical leave policies in place prior to FMLA's enactment than the private sector ... thus had fewer adjustments to make to come into compliance ... and incurred fewer costs. Report fails to consider costs that employers, employees and society will incur with FMLA ... to support employees who lose jobs because they do not have family and medical leave. ACIR is also incorrect to suggest that costs of implementing FMLA are disproportionately borne by state and local governments. Federal employees are in almost all respects treated the same as state, local, and private employees and employers under FMLA. ACIR is technically correct when it states that the FMLA "contain[s] special provisions for federal government employees." Federal employees may not sue directly in federal court to enforce FMLA ... relegated to an internal agency grievance procedure. In this one respect, we urge ACIR to recommend that Title II of FMLA be amended to afford the same enforcement procedures vis-a-vis the federal government as are afforded under Title I. Since FMLA became law, only one lawsuit and one arbitration filed against state or local employers. ACIR is flatly incorrect that small state and local government employers are overwhelmed by the FMLA's administrative costs ... (those with fewer than 50 employees within a 75-mile radius) are expressly exempt from the statute.) FMLA sets a floor below which employers' family and medical leave policies may not fall ... that floor is fairly minimal ... state and local employers, like private employers and the federal government, have enormous flexibility in establishing family and medical leave policies. Report recommendations to give state governments independent responsibility for enforcing FMLA in public sector should not be adopted.

THE FOLLOWING COMMENT LETTERS WERE RECEIVED AFTER THE CLOSE OF THE PUBLIC COMMENT LOG. THEY ARE NOT INCLUDED IN THE ANALYSIS SHEETS UNDER TAB A IN THIS REPORT.

- A** Thomas Ruben
130 Bradley Ave., #404
Meridan, CT 06451
IDEA -- Urges reauthorization without amendments.
- B** Nadine Kline Young
Rome, McGuigan, Sabanosh, Klebanoff,
P.C.
1 State Street
Hartford, CT 06103-3101
IDEA -- Urges reauthorization; opposes ACIR recommendations.
- C** Dennis Liphart
Hawaii Planning Council on Developmental
Disabilities
PO Box 671
3060 Eiwa Street, Room 207
Lihue, HI 96766
ADA / IDEA -- Opposes ACIR recommendations.
- D** Robert A. Crescenzo, President
Substance Abuse Program Administrators
Association
4350 DiPaolo Center, Suite C
Glenview, IL 60025
Drug & Alcohol Testing -- Opposes ACIR recommendations.
- E** Keith W. Shaw
Director of Pupil Service
Manitowoc Public School District
PO Box 1657
1010 Huron Street
Manitowoc, WI 54221-1657
IDEA -- Complete support for ACIR recommendations.

ADA -- Pre-printed form (Blue Postcard). No personal comments.

F Carol Brown-Wollin
7523 10th Avenue, NW
Seattle, WA 98117

ADA -- Pre-printed form (Blue Postcard). Personal comment: People with disabilities only want the same access that you and others experience every day of your life. We want to work, be educated and attend the same entertainment activities as you.

G Judie Ebbert Rich
10114 Steamboat Road, NW
Olympia, WA 98502

ADA -- Pre-printed form (Blue Postcard). No personal comments.

H Arlene Engel
PO Box 250
Sequim. WA 98382

ADA -- Pre-printed form (Blue Postcard). No personal comments

I Gillian Maguire
6932 37th Avenue, SW
Seattle, WA 98126

IDEA -- Supports ACIR proposal to increase funds to 40% or relieve states and local school districts from mandates. Supports ADR practices recommended. Several specific proposals for changes in IDEA included also.

J Ronald D. Wenkart
General counsel
School Legal Service
PO Box 9050
200 Kalmus Drive
Costa Mesa, CA 92628-9050

C

PUBLIC HEARING OF THE U. S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, March 26, 1996

#	NAME, TITLE, ORGANIZATION	COMMENT TOPIC
1	Barry Kasnitz, Legislative Assistant International Association of Firefighters 1750 New York Ave., NW Washington, DC 20006-5395	FLSA / OSHA -- Strongly oppose recommendations that coverage for public employees under FLSA and OSHA be repealed. <i>FLSA</i> : Guarantees workers a minimum wage and a reasonable work week, basic rights that are not less necessary today than they were in 1938. Congress recognizes that with certain very limited exceptions, all employees should be entitled to the same fundamental protections. FLSA should not be considered an unfunded mandate. State and local government employees are the only workers in America who do not have basic collective bargaining rights. Public agencies would be free to unilaterally abolish overtime pay or minimum wage if FLSA repealed. <i>OSHA</i> : Assessment of OSHA as unfunded mandate makes little sense. Several states have formally adopted OSHA's fire brigade standards, but others use lesser safety standards or none at all; this is matter of life and death. To deny firefighters OSHA coverage on basis of misunderstanding about law's coverage is untenable.
2	Mandy Rodgers PO Box 2405 Madison, MS 39130	IDEA -- Impressed by work ACIR has done on IDEA; positive step in right direction. Agree with recommendation to remove funding provisions that encourage and reward overclassification and segregation of students. Agree with recommendation to increase funding to 40%. Disagree with recommendation to eliminate statutory right of individuals to bring court action to enforce rights. Alternative dispute resolution (ADR) can be helpful in eliminating lengthy and costly due process hearings. Deferring implementation decisions to state and local governments would be disastrous.

- 3 Robert Herman
Advocacy Attorney
Paralyzed Veterans of America
- ADA -- ACIR has no authority to review ADA. Report does not state which state and local governments labeled ADA troubling. Compliance is challenging, not troubling. Civil rights laws not dependent on appropriation of funds. ADA carefully drafted to provide flexibility. Terms taken straight from Sect. 504. Oppose limiting private right of action.
- 4 Richard Treanor, Esq.
613 4th Place, SW
Washington, DC 20024
- ADA / IDEA -- Attorney General said there were not too many suits. If there is legitimate issues about costs, they should be studied.
- 5 Betty Livingston
Parents Educating Parents in Mississippi
9155 Mason Street
Olive Branch, MS 38654
- IDEA -- Recommend that a percentage of federal moneys be spent in teacher training. Recommend that federal moneys go into the colleges and cease if they do not start teaching student teachers how to teach with methods that have been proven to work. Recommend that IDEA be implemented as Congress originally intended.
- 6 Barry Weintraub, Secretary
Disability Rights, Inc.
12371 Manchester Way
Woodbridge, VA 22192
- ADA -- Proposal to eliminate right of individuals to bring direct suit against state and local governments a back doorway to repeal of Title 2. DOJ does not have resources to be sole enforcing agency. DOJ is the President's law firm and not the peoples' law firm. Has been little private litigation against state and local governments. Litigation arises because compliance costs. Let's address problems with Title II openly.
- 7 Billie Jean Hill
National Council on Disability
1331 F Street, NW, Suite 1050
Washington, DC 20004-1107
- ADA / IDEA -- Do not come under Mandates law.

8 Justine Maloney
American Speech, Language and Hearing
Association
10801 Rockville Pike
Rockville, MD 20852

ADA / OSHA / FMLA / IDEA -- Oppose recommendation on these laws. **IDEA:** Not an unfunded mandate. Requirements and safeguards are a contractual obligation for receiving federal funds. Failure of federal government to provide 40% of funding does not lessen the responsibility of local school districts to meet requirements of the law. Argument of financial incentive to overclassify children is irrational. Oppose funding allocation based on population. IDEA not litigious. Relaxing requirements would eliminate protections. Opposed to ADR and private right of action recommendations.

9 Paul Marchand
The Arc of the United States
1730 K St., NW, Suite 1212
Washington, DC 20006-3868

ADA / IDEA -- "How come only people with disabilities have a price tag on their rights?" Laws are not unfunded mandates. IDEA grounded 14th amendment. Recommendations not backed up by evidence. The very low number of cases brought under IDEA demonstrates the system works. Some compliance issues under ADA are problematic. Withdraw these items from report.

10 Karl Bell
Chairperson
Educational Support Personnel Caucus
National Education Association

FMLA / OSHA / FLSA -- Report lacks consistent standard, evidence, and disregards benefit of any standards it recommends repealing. FMLA provides significant protection at minimal cost. At least one-third of NEA members do not have rights to bargain under the FLSA. FLSA and FMLA should be minimum standard for any employee. Support extending OSHA to all state and local governments.

11 Linda Garrett
Board Member
National Education Association

IDEA -- Federal government has retreated significantly from its partnership with state and local government. Should increase financial commitment. NEA engaged in efforts to address concerns about litigation costs.

12 Lee Saunders
American Federation of State, County and
Municipal Employees
1625 L Street, NW
Washington, DC 20036-5687

FLSA / OSHA / FMLA -- State and local governments employers should be treated the same. ACIR thinkers and critics sessions never reached out to state and local employees or any of interests affected by recommendations. No cost data for worker protections recommended for repeal. **FLSA**: Report treats private sector differently. FLSA allows state and local governments to grant compensatory time instead of overtime, includes special rules for use of volunteers and delays implementation of compliance obligations. Nothing in the act denies employers the flexibility to change work schedules, work shifts, operation schedules and hiring practices for purpose of controlling overtime. Nearly 2/3 of state and local government workers do not belong to labor unions. Nearly 5.5 million lack collective bargaining rights. **OSHA**: Not a mandate because voluntary. Federal grants can fund up to 50% administrative costs. Expanding OSHA coverage to all public employees would save money. **FMLA**: 90% of private sector employers reported little or no cost associated with administration, hiring and training and continuation of benefits under the statute. 85% reported no noticeable effect on employer turnover, absence or productivity. State and locals granted flexibility.

13 Judith Lichtman, President
Women's Legal Defense Fund
1875 Connecticut Avenue, NW
Washington, DC 20009

FMLA -- No scientific methodology, offered no facts or statistics and cited no studies to support proposal. Of hundreds of submission to ACIR, no more than 20 mentioned FMLA. One in two million employees can be expected to use FMLA each year. Family Leave Commission found significant percentage of employers experienced only small increase or no increase in costs. ACIR failed to consider benefits. Employers of state and local governments with fewer than 50 employees within a 75 mile radius are exempt from the law.

14 Mark Glaiber
National Association of Fleet Administrators
Metropolitan Dade County
111 NW 1st Street, Suite 2530
Miami, FL 33128

Energy Policy Act of 1992 -- Urges ACIR to include mandating of alternative fuels in final report. [Cites specific examples of tremendous cost of mandate to local jurisdictions]

15 Gary Bass
OMB Watch
1742 Connecticut Avenue, NW
Washington, DC 20009-1171

General -- ACIR report lacks empirical data; recommendations would create "crazy quilt" of protections; report does not suggest alternative solutions for state and local governments; faulty ACIR process of soliciting public comment. {Citizens for Sensible Safeguards issued a report called "Shirking Responsibility" responding to ACIR report.]

16 Justin Dart
Justice for All
907 6th Street, SW #516C
Washington, DC 20024

ADA / IDEA -- Not unfunded mandates. Flexible implementation written into ADA. We will work with governments to create common sense solutions to problems.

17 Margaret J. Dunaway
Parent of child with disabilities

IDEA -- Keep IDEA as is. {Personal story of own experience with IDEA.

18 Al Bilik
President
AFL-CIO Public Employee Department
815 16th /street, NW, Suite 308
Washington, DC 20006

FMLA / FLSA -- FLSA: Many public employees cannot participate in collective bargaining. Report undermines working conditions of public employees and rejects basic premise of federalism that national standards should exist. FMLA: Not a financial hardship. ACIR should declare that the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation of activities between the levels of government; fulfill ACIR's original mission.

19 Christine Woodell
Mississippi Coalition of People with
Disabilities
6201 J.F. Douglas Drive
Ocean Springs, MS 39564

ADA / IDEA -- State and local governments may not be fully utilizing available resources. ADA had generated few lawsuits. Any document can be considered confusing or ambiguous. ADA has inherent flexibility built in and provisions protect any entity from undue financial or administrative burden. Program access is easily accomplished and not expensive. The government should be in the forefront of showing commitment to all citizens. In virtually all cases, notice is made that an individual feels a discrimination has occurred and opportunity is given to address this issue.

Debra Johnson
Executive Director
Idaho Parents Unlimited, Inc.

ADA / IDEA -- Feel betrayed and deceived because of inclusion of ADA and IDEA in report. Recommendation to limit lawsuits is blatant infraction of 14th amendment and based on false assumption that IDEA fosters excessive lawsuits. Federal legislation creates rights which, by their nature, are enforceable in courts, by the people whom they are intended to protect. If recommendation is enacted, it could force parents back to litigation under Sect. 504 and the Civil Rights Act, potentially increasing court actions. Under current law, courts have not allowed action under Sect. 504 or ADA to go to court if these could be addressed under IDEA's administrative procedures. Federal government should meet funding commitment. IDEA not a mandate, but a voluntary program. [Personal experience with IDEA]

Terri Dawson
Director
Parent Information Center, Wyoming

ADA / IDEA -- Both civil rights laws and exempted from mandate law. IDEA is voluntary mandate. [Personal experience with IDEA] If language weakened in IDEA by relieving prescriptive and costly administrative mandates, states will not provide the same consistent educational services across their borders. Want to know if son would receive same free, appropriate education in the least restrictive environment whether they moved to California, Mississippi, or New York. Federal government must maintain strong presence in special education so opportunity is same in every state. Support states' requests for better financial support so services can be consistent and appropriate from state to state. Without adequate funding and support, situations arise leading to conflict and litigation. With proper implementation and federal monitoring and enforcement, less litigation. Strongly support alternative resolution practices by districts required to offer mediation, but it must be voluntary.

Jaydee R. Hanson
Assistant General Secretary
General Board of Church and Society of the
United Methodist Church

FMLA / IDEA / ADA / Drug and Alcohol / OSHA / Davis-Bacon / FLSA / CWA / SDWA / ESA -- Oppose recommendations. Report an attempt to reduce governments' responsibility to ensure equal protection of rights for all of God's creation. Recommendation would create an unjust society in the name of economic expediency, therefore being immoral. No money/no mandate philosophy inherent in report would be felt by most vulnerable in society. Embarrassed to come from county that is one of few with no paid family and medical leave. Favor authorization of federal funds to provide free appropriate education [IDEA] for children with disabilities. Support need for federally approved plan for education of students with disabilities before a state may receive federal funds. Disturbing that recommendations on labor and workplace laws are based on concerns of public employers and not beneficiaries of the laws. Environmental resources can be protected by uniform federal and international policies.

23 Terry Bumpers
National Alliance for Fair Contracting

Davis-Bacon -- Support reform through HR 2472 and S. 1183. These bill address may of the issues raised by ACIR report. Support greatly reducing paperwork burden, eliminating coverage from more than two-thirds of current projects subject to act, and defining instances where unskilled helpers may be employed and streamlining enforcement activity. Have testified before Congress relative to survey process. Tired of hearing cost claim issue. Productivity is a major component of labor cost and it cannot be measured with any degree of accuracy in construction. ACIR's suggestion that a related act could apply to only projects with a total dollar cost in excess of \$1 million and which federal grant funding exceeds 50% of the total project cost is tantamount to repeal. Recommendation would leave state and local governments to creatively fund their projects to exclude coverage which would force contractors to discontinue training programs. Recommendation would eliminate health coverage and pension plans in order to compete in marketplace. Would cause a cost shift to public sector. Federal, state and local governments would be forced to replace these privately funded programs and would be forced to provide indigent health care for workers with no health coverage. Statement contending that scarcity of survey data means that wage rates from distant areas often must be used in small, rural communities shows that ACIR has no understanding of Act. Report states that local and state governments can identify the use of federal and non-federal moneys separately so that non-federal moneys are not subject to Davis-Bacon rules; contract splitting is illegal. [Referring to 1995 testimony of Michael Resnick, NSBA] to ask school board members what Davis-Bacon costs is like asking members of Congress how much will be spent on congressional campaigns this year. Without Davis-Bacon, communities will become more populated with low wage, low skill workers who have no health care or pensions, which will cause them to bear the burden of higher social service cost. President on right track to reward and encourage responsible employers who provide benefits to their workers.

24 Velma Parness
FMLA -- Opposes any changes. [Personal experience with FMLA]

Erik Olson
Natural Resources Defense Council

SDWA / CAA / CWA/ ESA / General -- Concerned with report formulation process; lacks facts and scholarly citations; crazy quilt of protections; lack of background and benefits; oppose six common issue recommendations; oppose environmental mandate recommendations. Asking Constitution, 14th Amendment, and Ten Commandments are all unfunded mandates. Asking advocates what their impressions are is not way to fact-find. **SDWA**: Only 14 states had adopted federal drinking water standards before Act was passed; ample evidence due to disease outbreaks and due to public health problems that a federal law was necessary. **General**: Flexibility and cost are taken into account in environmental laws. Many of the laws were necessitated because state and local governments failed to act. If there are federal environmental or other laws and there are enforcement deficiencies due to a lack of resources at the federal level, due to a lack of political will at the federal level, citizens should be able to assure that their environment is protected or that their rights are protected. [Examples given]

Gus Estrella
United Cerebral Palsy Associations
1660 L Street, NW, Suite 700
Washington, DC 20036-5602

ADA / IDEA -- Support laws as is. ACIR was not charged with the task of creating a hierarchy of laws that some states feel are too costly or troublesome. [Personal experience with laws]

Kathryn L. McMichael
 Director of Federal Relations
 National School Boards Association
 1680 Duke Street
 Alexandria, VA 22314-3493

IDEA / Davis-Bacon / OSHA -- Support recommendations. Significant impact on the use of public dollars to achieve primary mission: education. Given the constitutional system of government, federal government should exercise restraint when it does regulate the public functions of state and local governments. Congress should show self-restraint in scope of mandate costs involved, including the creation of duplicative administrative systems that take away time and money for education. Federal government should bear the mandate costs. Commend ACIR for recommendations concerning costs of federal mandates. Because the federal government is disconnected from the financial responsibilities of its mandates, believe it has little incentive to set priorities, to engage in meaningful cost-benefit analysis, or to reevaluate existing mandates once on the books; this is why ACIR report is important. The consequences of implementing costly federal mandated programs means that school boards face unpalatable tradeoffs: larger class sizes, postponing purchases of up-to-date curriculum material or even eliminating programs especially in those communities that do not have the capacity to raise taxes. Estimated that 26 cents of every new dollar spent by school systems between 1967 and 1991 were invested in general education programs, while 38 cents was spent on mandated special education programs. Of the remaining 36 cents, a substantial portion was spent on other unfunded mandates. Pleas that ACIR has been delegated to examine existing mandates. **Davis-Bacon:** Repeal would permit school districts to repair or replace aging school buildings at a much faster pace than is currently being done, because scarce tax dollars would go farther in school construction projects. **OSHA:** In 1992, Texas Association of School Boards estimated that it would cost more than \$10 million to implement only selected OSHA regulations. **IDEA:** School districts pay almost \$30 Billion in additional costs of special education from state and local resources because federal government only pays 7%. Nation has \$50 billion special education system built on IDEA.

Katherine Ben Neas
 Consortium for Citizens with Disabilities
 Task Force

IDEA -- Oppose IDEA recommendations. IDEA has resulted in significant savings to government. Because of its support to states, millions of children have been able to reside at home with their families and attend school, not attend state institutions. [Statistics cited.] IDEA not litigious. IDEA only civil rights law that actually comes with money for states to implement.

John H. Sullivan
American Water Works Association

SDWA / OSHA / CWA / ESA / ESA -- Report is well directed. Suggest report be flavored with some positive aspects of joint government efforts towards solutions and tempered with a balance of bipartisan support. On detailed procedure requirements, it should be limited to providing national impact research and technical advice and let the states and local governments implement the best they can. Issue not cost; issue is using the principles of relative risk reduction in order to establish reasonable priorities on where to put critical dollars. Cannot continue to encourage frivolous litigation; citizen suits, where appropriate compliance action has already taken place, must be discouraged. If governments cannot be trusted to implement the law, then we ought to replace those governments. Amendments of SDWA were developed for large water systems; dictates that those systems to be considered in setting standards and applying technology are for communities that serve a million people or more. There is no policy on allocating water in the U.S. There needs to be good science an other considerations put into the standard-setting process and how contaminants are selected. Needs to be more flexibility and small systems need to be addressed in a realistic way. Support ESA recommendations.

Paul D. Schwartz
National Campaigns Director
Clean Water Action
1320 18th Street, NW
Washington, DC 20036-1811

CWA / SDWA -- Cost consideration has always been thought of by the environmental and public health community to be too much of a factor in containment and selection and in standard setting. We need both new technological packages and financial assistance for rural and hard-pressed communities. [Examples of Clean Water problems given] The current system rewards pollution as a rational economic decision by making it more expensive to control the discharges than to pay the nominal fees for permits. Job creation is a benefit of clean water attainment. Do we eliminate standards which protect water quality and the public health because we can't afford them, or do we make clean water a national priority by finding the necessary resources? Who should pay for this protection, the polluters or the victims of the pollution? Answers are obvious. Support adequate funding for environmental protection.

31 Angela M. Antonelli
Deputy Director for Economic Policy
Studies, Heritage Foundation

General -- Report needs to be strengthened. Report highlights some of the most burdensome mandates and identifies hundreds of others. Inventory of these unfunded mandates is desperately needed and very valuable. Report barely scratches the surface of a huge problem.. Costly requirements that are imposed by Washington are the biggest problems undermining the fiscal health of state and local governments. Forcing them to sacrifice their own programs and priorities in order to comply with standards set by a distant federal government have backed these governments into fiscal corner, forcing them to enact dramatic tax increases, reduce state spending on education, infrastructure, law enforcement or some other services. Commission somewhat misguided in its position that simply more money or more flexibility or exemptions for states and local governments are the only answers; sets double standard for private sector and Report does not consider whether its relief efforts should also extend to the private sector and what impact the recommendations might have on the private sector. ACIR is to be applauded for its bravery, especially in citing the ADA; it has done the right thing. Those who criticize the ACIR for its actions believe that these Acts should be done at any cost and without regard to cost. Local communities need the flexibility to prioritize and implement mandates as they see fit while still achieving the desired social goals. Report confirms that the burden of unfunded federal mandates is real and significant and it serves as an important and useful starting point for reform. This report would serve as a foundations for a new round of legislative initiatives. State and localities are not making this stuff up; report formally acknowledges and legitimizes their concerns.

32 Cheryl R. Takemoto
901 N. Montana Street
Arlington, VA 22205

IDEA -- Support law as is. It is a highly legalistic process. Agree that federal government should pay 40% of cost. [Personal experience with IDEA]

33 James Sheedy
Vice-President
American Federal of Teachers

CAA -- Strong leadership a must. History in CAA field shows folly of taking a states rights approach. From a purely scientific logistical point of view, all arguments support the development of a strong, centralized program to control air toxins. Without uniform, nationwide rules, it sets a scene for bidding for jobs and their pollution by the locality or state most controlled by corporate interests. Almost all states now have federal EPA delegated authority to run the pollution programs in their states. [Relates experience with CAA]

ADA / IDEA -- Oppose ADA and IDEA recommendations. Education and technical assistance will go a long way in helping to reduce the misunderstandings and bring about broad-based implementation of the ADA that exists across the country. Education is the key to clearing up misconceptions about the ADA held by the public and state and local governments. DOJ and other agencies that enforce the ADA have many more complaints than they can handle. Recommendation that Congress provide increased funding that will enable government entities to fulfill their obligations effectively and efficiently is both warranted and necessary. Resources spent on education about the laws and proactive enforcement will also serve to greatly reduce litigation and other expensive subsidy programs.

**34 Laura Rouner
Attorney
National Association of the Deaf**

FMLA -- Oppose recommendations. Between 2 and 4 percent of eligible employees will use FMLA. [Cites statistics]

**35 Gail Hunt
National Alliance for Care Giving**

CAA / CWA / ESA -- Oppose recommendations.[Relates New Jersey experience]

**36 Delores Phillips
Legislative and Policy Director
New Jersey Environmental Federation**

ADA / IDEA -- Oppose recommendations.

**37 Brette Browning
Coalition for Texans with Disabilities**

Bob Mitchell
National Association of Home Builders

CWA / ESA -- When confronted with unfunded mandates, local governments respond by imposing greater fees for building permits, water and sewer hookups and subdivision approvals. Obviously it is politically more acceptable for a local politician to sell this cost to a very specific non-present constituency than it is to spread it over all taxpayers. Unfunded mandates prohibit builders from being able to provide affordable housing at all levels. **ESA**: Supports recommendation. Federal governments standard of relying on the best available scientific and commercial data has resulted in poor listing decisions based on insufficient data. Best available data does not always represent most scientifically reliable data. Loss of development or delayed development means the loss of thousands of dollars in property tax revenue. Costs associated with developing and implementing habitat conservatory plans and recovery plans also pose significant problems to state and local governments. Federal government has dictated highly stringent guidelines to follow in developing these plans, yet plays a minor role in developing or funding. Plans take years to prepare during which time development is stopped. **CWA**: Lack of flexibility.

Christy Willis
Association on Higher Education and
Disability
PO Box 21192
Columbus, OH 43221

ADA / IDEA -- Courts have been extremely conservative in their interpretation of the ADA and the judiciary has not extended ADA protection to persons not intended to be covered by the ADA. ACIR falsely assumes that DOJ is capable of enforcing the individual civil rights of 49 million Americans. It violates basic principles of the separation of powers for the federal government to act as the sole investigator, finder of fact and legal representative of individual citizens in private civil rights actions. Due to limited resources, DOJ does not file claims on behalf of single consumers unless the ruling is expected to have broad impact. An extensive body of law gives specific guidance regarding the application of terms in ADA. Definitions must be broad enough to allow for compliance by entities with varying needs and abilities. IDEA is procedural. Potential for increased funding is not sufficiently lucrative to make it worthwhile to classify children as disabled. Appreciate that certain aspects of the ADA place financial burdens upon public institutions. Support increased technical and educational assistance for ADA; support increased funding for compliance under ADA; support increased funding for IDEA.

40 Jeannine Markoe
Public Sector Fair Labor Standards Act
Coalition

FLSA -- Resulting exposure to litigation has produced enormous liabilities for state and local governments and taxpayers and continues to threaten jurisdictions' fiscal solvency. Conflicts between FLSA regulations and state and local policies have disallowed numerous management employees from qualifying under white collar exemption tests. Ambiguity of the regulations have made it nearly impossible for public employers to discern who should be receiving overtime pay. Outdated regulations subject to various and inconsistent judicial interpretations. Existing liability is in the millions. Greatly appreciate insightfulness behind ACIR recommendations.

41 Barrie Tabin
Public Sector Fair Labor Standards Act
Coalition

FLSA -- Regulations never intended to apply to public sector. Pleased to see ACIR recommend repeal. ACIR has created a sufficient framework to urge repeal. Application to public sector is violation of 10th amendment. General intrusiveness into state and local authority and extremely high cost and DOL's failure to address problem through regulations is what led ACIR to conclusion to repeal. NLC supports repeal.

42 Vicky LaDue

IDEA -- [Written comments] Keep as originally intended to be and funded.

43 Noel Massey

IDEA -- [Written comments] Personal experience with IDEA.

44 Mr. and Mrs. Joseph G. McBride

IDEA -- [Written comments] Personal experience with IDEA.

45 Ken Kirk
Executive Director
Association of Metropolitan Sewerage
Agencies, Connecticut

CWA -- [Written comments] To ensure continued and sustained progress in the protection of water quality, we must focus our energy on two critical goals, a strong federal commitment to funding and a national program of comprehensive watershed management. Urge ACIR to endorse reform of CWA through the establishment of watershed management as both a viable and appropriate means through which to address water quality concerns and priorities. [Report entitled "Cost of Clean" enclosed with testimony.]

46 Heather Weiner
Legislative Counsel
Defenders of Wildlife

ESA -- [Written Comments] Report rightly calls for increased roles for states, local, and tribal government. Strong federal oversight of state endangered species programs is essential. Recent efforts at cooperation have been successful. Should be no state veto power. Agree that insufficient funding has contributed to ineffective implementation.

Robert A. Georgine
President
Building and Construction Trades Dept.
AFL-CIO

FLSA / FMLA / OSHA / Davis-Bacon -- Oppose recommendations to repeal. While states and local governments have been able to obtain a substantial share of federal revenues, they have also been successful in exempting themselves from a wide variety of mandates. If a state or locality view the federal policy as contrary to local interest [Davis-Bacon] they have the right to decline a federal grant. *Davis-Bacon*: Tinkering with threshold levels would make Act unworkable.



D



ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

**FEDERAL AGENCY AND CONGRESSIONAL RESPONSE TO
ACIR'S PRELIMINARY REPORT**

***THE ROLE OF FEDERAL MANDATES IN
INTERGOVERNMENTAL RELATIONS***

Enclosed are responses by members of Congress and the Administration regarding ACIR's Preliminary Report *The Role of Federal Mandates in Intergovernmental Relations*. The following respondents' comments are attached: Representative James P. Moran; Representative Donald M. Payne; Marcia Hale, Assistant to the President and Director for Intergovernmental Affairs; Richard W. Riley, Secretary of Education; Carol M. Browner, Administrator of the U.S. Environmental Protection Agency (EPA); Janet Reno, Attorney General; Robert B. Reich, Secretary of Labor; Frank E. Kruesi, Assistant Secretary for Transportation Policy; George T. Frampton, Jr., Assistant Secretary for Fish and Wildlife and Parks; Eleanor D. Acheson, Assistant Attorney General, Office of Policy Development, Department of Justice; Gilbert F. Casellas, Chairman, U.S. Equal Employment Opportunity Commission; Representative Neil Abercrombie; and Senator Christopher J. Dodd.

The following summarizes major points contained in the letters received. Attached to some of the letters are more extensive comments on individual issues.

Representative James P. Moran

Representative Donald M. Payne:

- "...voted against the recommendations because of the limited opportunity of the full body of members to meet, review the draft recommendations, air disagreements and discuss different perspectives."
- "If we are unable to convene a meeting where a full quorum is present, we would prefer to have the final report present the full set of recommendations described in the December 1, 1995 draft."
- "ACIR's proper role is to smooth bumps in the intergovernmental system, identify the problems and build a consensus on appropriate remedies. ACIR compromises this role and invites controversy when it endorses specific legislative remedies without a fairly high degree of consensus among its members."

The White House, Office of Intergovernmental Affairs:

- “The draft report fails to respond to key questions the Congress posed to ACIR, and instead focuses on policy issues well outside of ACIR Congressional mandate or area of expertise.”
- “...the draft report discusses the costs of mandates largely without examining their benefits.”
- “...the draft report focuses on the requirements of specific statutes without establishing a sufficient framework for their consideration.”
- The Administration strongly opposes recommendations pertaining to *Family Medical Leave Act*, *Occupational Safety and Health Act*, *Fair Labor Standards Act*, and *Davis-Bacon* related acts.
- “The preliminary staff draft also recommends several generic modifications to Federal laws without carefully considering the consequences of such changes.”
- “The preliminary staff draft recommends --again without adequate justification -- substantially weakening Federal environmental statutes.”
- The Administration opposes recommendations pertaining to ADA and *Individuals with Disabilities Education Act (IDEA)*.
- “...concerned about the process for seeking public comment on the staff draft.”

Department of Education:

- “...strong belief that inclusion of IDEA in the staff draft report is inappropriate because IDEA enforces the Constitutional rights of disabled individuals...”
- “...it is neither realistic nor appropriate to link, as the draft staff report does, compliance with IDEA requirements to dramatic funding increases.”
- “...many of the provisions of the Administration’s proposal to reform and reauthorize IDEA are designed to reduce burden and paperwork at the school, school district, and State level and redirect those energies into improving educational outcomes for disabled children.”
- “The Administration’s proposal would require States to offer impartial mediation to parents as a no-cost optional means of settling disputes...”
- “Depriving parents and students of the ability to vindicate their rights under IDEA in court, if necessary, is fundamentally inconsistent with the intent of the law to create individual rights in those parents and students...”
- “...the amount of litigation spawned by IDEA is not disproportionate.”
- “Without correspondingly large increases in funding for Federal enforcement staff...IDEA enforcement would be substantially undermined.”
- “...it is unlikely that such parents and students would be kept out of the Federal courts merely by removing IDEA’s cause of action.”
- “Another weakness of the draft staff report is that it does not recognize that reform of IDEA is a major priority of this Department...”

Environmental Protection Agency:

- "...we have -- as many governors, mayors, and county officials will attest -- made tremendous progress in recent years implementing that commitment by providing greater flexibility to states and localities while continuing to achieve improved environmental results."
- "...deeply concerned that implementation of the recommendations in the preliminary draft would dramatically compromise public health and environmental quality."
- "...major concerns with regard to four specific recommendations of the draft report as they pertain to environmental quality: the recommendation to withdraw citizens' rights in the enforcement of environmental laws; the call for significant relaxation of water pollution control by municipalities; the proposed long-term goal of eliminating federal authority to set and enforce standards for safe drinking water; and, the proposal to limit federal authority to assure the effective control of harmful air pollutants."
"The proposal that health and safety standards applied to state and local government be different than those applied to private industry and the federal government is particularly troubling, as is the proposal regarding the *Endangered Species Act*."
- "...the proposal that a single federal agency be designated to make binding decisions about each mandate warrants further consideration."
- "...this staff draft directs little attention to the beneficial effects of federal mandates."
- "...if the ACIR report is going to assert the existence of a significant problem based on the comments it received during the preparation of the draft report, the assertion should be verified before inclusion in the report."

Department of Justice:

- "(ACIR's) recommendations are apparently based on the significant misperception that the ADA (*Americans with Disabilities Act*) imposes expensive requirements on state and local governments under inflexible deadlines."
- "...concerned that these recommendations, if implemented, would seriously undermine the nation's effort to meet its obligations to people with disabilities."
- "...the ADA generally permits state and local governments to exercise substantial discretion in determining how to make their programs accessible. In addition, cost is appropriately considered in determining what the ADA requires and whether compliance deadlines apply."
- "The proposed extension of the compliance deadlines for the installation of curb ramps demonstrates that the ADA, in its present form, is being implemented in a way that permits state and local governments to consider local economic realities in making ADA determinations."

Department of Justice, Office of Policy Development:

- "This letter supplements the concerns already expressed in letters from Attorney General Janet Reno...and from Marcia Hale, Assistant to the President and Director for Intergovernmental Affairs..."

- "...concerned that the preliminary report and the staff working papers reach unfounded conclusions based on inadequate analysis..."
- "Despite this exclusion [Section 4 of the Unfunded Mandates Reform Act], the preliminary report recommends significant changes in the ADA and its implementing regulations as they apply to State and local governments."
- "The Department strongly urges the ACIR to reconsider these recommendations as they apply to compliance and enforcement [of the ADA], and delete them from the Final Report."
- "We would welcome the assistance of the ACIR in an effort to expand and improve the technical assistance programs government-wide."
- "...the Final Report should reflect the significant efforts the Administration has made to increase flexibility for state and local governments in implementing federal programs."
- "The Final Report should also reflect the legitimate health, welfare, safety and environmental concerns underlying federal statutory requirements."
- "The draft report is largely a reiteration of complaints without an independent analysis of each alleged unfunded mandate, its burdens and benefits."
- "The Final Report should also distinguish between federal "mandates" that require the state or local government to exercise some governmental/regulatory function in a particular way and other federal mandates that simply require all persons engaged in a particular activity to meet the same standards."
- "...this proposal [to bar individuals from enforcing federal laws against state and local governments] would severely limit the enforcement of federal law and its deterrent effect."

Department of Labor:

- "...the report's recommendations on labor standards would seriously erode intergovernmental relations and irrevocably harm this country's commitment to American workers by endangering their right to a safe and healthful workplace, to minimum wage and overtime pay, and to family and medical leave..."
- "If the recommendations in the report were implemented, state and local government workers would become second class citizens -- deemed unworthy of the same basic protections as their neighbors, friends, and family who work in the private sector or for Federal agencies."
- "ACIR has not taken into account Congress's instruction upon adoption of the *Unfunded Mandates Reform Act* that the Commission actively consider the impact of its recommendations on American workers, and that the Commission formulate its recommended changes in Federal policies to enhance intergovernmental relations with a view toward maintaining a commitment to vital national interests."

Department of Transportation:

- "...the preliminary draft report indicates that a number of the issues the report raises stem from the underlying statutes, rather than the regulations that implement them."
- "...the preliminary draft report does not appear to acknowledge the progress that has already been made in regulatory reform through the Clinton Administration's National Performance Review initiative..."
- DOT strongly disagrees with the recommendation to repeal drug and alcohol testing for state and local government employees driving commercial vehicles and believes that it should be withdrawn from the final report.
- The recommendation to repeal requirements for metric conversion for plans and specifications as a condition of receiving federal aid appears to be based on an incorrect understanding of current conditions.
- DOT disagrees with the ADA recommendations for various reasons.
- *Clean Air Act*: "Greater flexibility in schedules for attainment would reduce the burdens on states. The proposal to eliminate financial penalties based on such a low threshold or standard as 'good faith efforts' could run the risk of significantly weakening enforcement of national air quality standards."

Department of the Interior:

- "...the preliminary ACIR report reflects clear misunderstandings about the *Endangered Species Act (ESA)* and fails to acknowledge substantial reforms put forward by the Clinton Administration in making the law work more flexibly for States, local government and private landowners."
- "Fundamentally, we question the characterization of the ESA as an unfunded mandate."
- "More extensive use of the ESA's exemption process is not necessary to balance conservation and economic concerns."
- "...the report fails to acknowledge unprecedented reforms advanced by the Administration to minimize economic consequences and increase flexibility of the ESA."
- "There are a number of recommendations included in the ACIR report that reflect reforms we have already put into place."
- "There are several mischaracterizations of the regulatory provisions of the ESA within the ACIR report that include inaccurate representation of Section 9 prohibitions on 'taking' of species."

U.S. Equal Employment Opportunity Commission:

- “ADA’s employment provisions are modeled on the Rehabilitation Act and are not new for most state/local governments.”
- “ADA’s reasonable accommodation/undue hardship provisions are based on the Rehabilitation Act and are not onerous.”
- “The relatively minor costs of providing reasonable accommodation are offset by the benefits resulting from increased employment of people with disabilities, reduced dependence on Social Security, increased consumer spending by people with disabilities, and increased tax revenues.”
- “The ADA specifically looks at such things as the cost of the accommodation in relation to the particular employer’s resources, rather than using a “one size fits all” approach.”
- “The EEOC has provided a wealth of guidance on an employer’s reasonable accommodation obligations and the undue hardship defense.”
- “The ACIR report’s criticism of ADA enforcement mechanisms is unfounded in light of established and workable procedures which have been operating for years under federal civil rights statutes.”
- “...the report’s recommendation that private actions against state or local governments should be barred is flawed in light of the ADA’s purpose to eliminate disability discrimination.”
- “All new statutes inevitably have a general “break-in” period.”

Representative Neil Abercrombie:

- “Efforts to guarantee equal rights for citizens with disabilities would be set back by the report recommendations to eliminate a private cause of action and to reduce state and local governments’ compliance obligations under these statutes [ADA, IDEA].
- “Under the ADA and the IDEA, flexibility and reasonableness are integral throughout the statutory language.”
- “It is simply unnecessary that compliance requirements be temporarily or permanently suspended or made voluntary for states and counties experiencing financial difficulties in complying with the law.”
- “...the federal government provides substantial education and assistance services. It funds 80% of transportation costs, including construction and operation for the ADA. Also, community block grants may be used to satisfy statutory requirements.”
- “...the ADA and the IDEA are not unfunded mandates; they are civil rights acts.”
- “To make the IDEA and the ADA local option laws is to reduce the disabled to second class citizens.”

Senator Christopher J. Dodd:

- “Contrary to the expectation of some, the results [of Commission on Leave study] indicate that businesses have not found that complying with the Act [Family Medical Leave Act] was costly or presented an administrative burden.”
- “[ACIR’s] recommendation is based on the untenable finding that there is not “sufficient national interest to justify” FMLA’s coverage of state and local employees.”
- “State and local workers have these same needs and deserve the same protection.”
- “...the ACIR’s report asserts that the FMLA increases costs to employers. The findings of the Commission on Leave were available to the Advisory Commission. Indeed, this data contradicts the ACIR’s findings on cost increases.”

COMMITTEE
ON
GOVERNMENT REFORM
AND OVERSIGHT
ICOMMITTEE ON CIVIL SERVICE
RANKING MINORITY MEMBER

COMMITTEE
ON
INTERNATIONAL RELATIONS

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS

Congress of the United States
House of Representatives
Washington, DC 20515-4608

JAMES P. MORAN
8TH DISTRICT OF VIRGINIA

WASHINGTON OFFICE:
405 CANNON HOUSE
OFFICE BUILDING
WASHINGTON, DC 20515-4608
(202) 225-4376

February 12, 1996

The Honorable William F. Winter
Chairman
Advisory Commission on Intergovernmental Relations
800 K Street, N.W.
Suite 450
Washington, D.C. 20575

Dear Chairman Winter:


We are writing to express our concern with the decision of a majority of ACIR members to endorse a specific set of recommendations on the "The Role of Federal Mandates in Intergovernmental Relations."

We voted against the recommendations because of the limited opportunity of the full body of members to meet, review the draft recommendations, air disagreements and discuss different perspectives. Obviously, the federal furlough and the government shut down prevented many of the federal members from attending the December 19 meeting. If we are unable to convene a meeting where a full quorum is present, we would prefer to have the final report present the full set of recommendations described in the December 1, 1995 draft.

ACIR's proper role is to smooth bumps in the intergovernmental system, identify the problems and build a consensus on appropriate remedies. ACIR compromises this role and invites controversy when it endorses specific legislative remedies without a fairly high degree of consensus among its members. Where a near consensus exists, a preferred recommendation may be endorsed.

We look forward to an opportunity to raise our concerns at the next meeting.

Sincerely,


James P. Moran


Donald M. Payne

**THE WHITE HOUSE
WASHINGTON**

March 1, 1996

**The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, DC 20575**

Dear Governor Winter:

I am writing to express my deep concerns about the preliminary staff draft of the Advisory Commission on Intergovernmental Relations (ACIR) Report: *The Role of Federal Mandates in Intergovernmental Relations*. The draft report fails to respond to key questions the Congress posed to ACIR, and instead focuses on policy issues well outside of ACIR Congressional mandate or area of expertise. In addition, the draft report discusses the costs of mandates largely without examining their benefits. As a member of the Commission, I oppose many of the specific recommendations in the report, and would like to work with you and other members of ACIR to develop a more balanced report of the Commission's work.

As you know, Title III of the Unfunded Mandates Reform Act of 1995 directs ACIR to: (1) "review the role of Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities, and their impact on the competitive balance between State, local, and tribal governments, and the private sector and consider views of and the impact on working men and women on those same matters;" (2) investigate the role of unfunded State mandates on local governments; (3) make recommendations in seven different general areas, including providing flexibility and reconciling inconsistent mandates; and (4) identify specific mandates that should be addressed in each of these areas. Congress also instructed the ACIR to examine measurement and definitional issues involved in calculating total costs and benefits of Federal mandates.

The preliminary staff draft report does not adequately reflect this Congressional charge. Unfortunately, the draft report focuses on the requirements of specific statutes without establishing a sufficient framework for their consideration. The report does little to further consensus on fundamental questions such as how state mandates affect local governments and how we should measure the costs and benefits of mandates. Instead, it presents cursory and often misleading analyses of 14 Federal health, safety, environmental,

worker protection, and civil rights laws. These analyses fail to consider the views of or effects on working men and women as directed by Congress.

For example, the preliminary staff draft recommends that Congress repeal the Family and Medical Leave Act's (FMLA) applicability to state and local governments. The Clinton Administration opposes this recommendation. The draft report asserts that the FMLA has "created unfunded costs related to extending medical insurance coverage to employees while on leave, to temporary hiring of replacement workers, and to additional training and personnel counseling activities..." The report cites no supporting evidence for this claim, however. Further, the report does not acknowledge the substantial benefits to employers, families, and individuals of implementing FMLA requirements. In addition, the Administration strongly opposes the recommendations that would weaken other labor protections including proposed changes to OSHA, the Fair Labor Standards Act and Davis-Bacon-related acts.

The preliminary staff draft also recommends several generic modifications to Federal laws without carefully considering the consequences of such changes. For example, the draft report proposes eliminating citizens' rights to sue state and local governments to enforce Federal mandates. The Administration strongly opposes this broad-sweeping change. Again, the recommendation is based on a consideration of costs but not of benefits. The draft report simply asserts that citizen suits create "budgetary uncertainties and substantial legal costs" for state and local governments. The draft report does not document or quantify these costs, or discuss the constructive role citizen suits have played in strengthening enforcement of civil rights, environmental, and other Federal statutes.

The draft report's proposed changes to specific environmental laws are similarly disconcerting. The preliminary staff draft recommends -- again without adequate justification -- substantially weakening Federal environmental statutes. For example, the draft report recommends eliminating financial aid penalties for states that fail to meet Federal air quality standards where such states are making a good faith efforts to comply. The Administration opposes this proposal. As the draft report itself notes, most states did not adequately control air pollution until strong Federal standards and enforcement mechanisms were put in place. Now that sanctions are mandatory, states, with a few exceptions, are meeting compliance deadlines, although sanctions have almost never been applied.

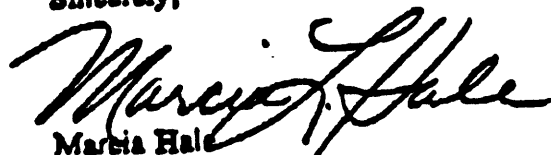
Another particular concern is the report's recommendations with respect to civil rights laws for people with disabilities -- specifically, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). The Administration opposes the draft report's recommendations with respect to these laws. Since the Unfunded Mandates Reform Act does not apply to civil rights statutes, it is inappropriate for ACIR to recommend changes to these laws. The draft report's recommendations to eliminate a private right of action and to reduce state and local governments' compliance obligations under these statutes would set back our efforts to guarantee equal rights for citizens with disabilities. I would note that both of these laws allow Federal agencies to emphasize education and voluntary compliance as much as possible, and that this Administration has taken a cooperative and flexible approach in implementing the ADA and IDEA.

I am also concerned about the process for seeking public comment on the staff draft. I urge you to ensure full public participation in the Commission's deliberations. I understand the ACIR is sponsoring a March 6-7 Conference on Federal mandates and is charging an admission fee. In my opinion, charging a fee in this context is inappropriate since it creates a barrier to full public participation. I strongly endorse an accessible public meeting to seek comment on ACIR's activities.

As you know, the Clinton Administration has worked hard to strengthen the intergovernmental partnership and to address state and local government concerns about unfunded mandates. The President signed Executive Order 12875 during his first year in office to ensure that new regulations do not place undue burdens on states and communities. In March of 1995, he signed the Unfunded Mandates Reform Act. In addition, the Administration has proposed or supported modifying a number of Federal laws to ease the public sector's compliance burden. Further, in implementing Federal laws, the Administration has sought to provide state and local governments with enhanced technical assistance and to help them take full advantage of the flexibility that already exists in many Federal statutes.

I have additional serious concerns about many of the draft report's recommendations not mentioned in this letter. Attached are comments prepared by Federal agencies and departments on the draft report. Federal agencies will also be forwarding comments to you and the Commission directly. I urge you to give their comments full consideration as the Commission redrafts the report.

Sincerely,



Marcia Hale
Assistant to the President and Director for
Intergovernmental Affairs

Attachments

cc:



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

March 6, 1996

Honorable William Winter
Chair
Advisory Council on Intergovernmental Relations
South Building, Suite 450
800 K Street, NW
Washington, DC 20575

Dear Governor Winter:

As a member of the ACIR, I share your commitment to effective local, state, and federal partnerships and to development of a useful, balanced report from ACIR to the Congress on Federal mandates. In addition, as Secretary of Education I have a special responsibility for implementing the Individuals with Disabilities Education Act (IDEA) in a manner that is consistent with the legislative goal of promoting educational opportunities for children with disabilities. I am therefore taking this opportunity to explain to you the grave concerns I have with the IDEA portion of the draft staff report, beyond those noted in Marcia Hale's letter to you of March 1, 1996.

At the outset, I want to underscore my strong belief that inclusion of IDEA in the staff draft report is inappropriate because IDEA enforces the Constitutional rights of disabled individuals under the Equal Protection Clause of the Fourteenth Amendment and establishes statutory rights that prohibit discrimination on the basis of disability. Section 4 of the Unfunded Mandates Act itself indicates clearly that, for the purposes of the Act, such rights are to be given a preferred status. In addition, the rights established under IDEA are not only personal rights, but rights that directly reflect the fundamental obligation of State and local governments to avoid discrimination in carrying out their governmental functions. For these reasons, IDEA should not even be included in the report, and, to my mind, its inclusion makes the report unacceptable.

Turning to the specifics of ACIR's draft recommendations, I have the following serious concerns, each of which supports my view that the discussion of IDEA should be dropped from the report:

(1) "Increase Federal Funding to 40% Level." While not disagreeing in principle that it would be desirable to increase the level of Federal funding, the five-fold increase called for by ACIR is simply not realistic in light of current budget realities. Moreover, as noted above, the obligations imposed on States and local school systems under IDEA are rooted in the Equal Protection Clause of the Fourteenth Amendment; IDEA was

enacted in 1975, and signed by President Ford, to assist the States and school systems to meet their basic Constitutional obligations. Accordingly, it is neither realistic nor appropriate to link, as the draft staff report does, compliance with IDEA requirements to dramatic funding increases.

(2) "Relieve States From Administrative Mandates." As described below, many of the provisions of the Administration's proposal to reform and reauthorize IDEA are designed to reduce burden and paperwork at the school, school district, and State level and redirect those energies into improving educational outcomes for disabled children. These provisions are already the subject of considerable Congressional interest.

(3) "Require Alternative Dispute Resolution Practices." The Administration's proposal would require States to offer impartial mediation to parents as a no-cost optional means of settling disputes between them and the school district regarding services provided to their disabled child. We considered, and rejected as impractical, requiring parents to avail themselves of mediation, based in part on the comments of State administrators with experience in the operation of mediation systems.

(4) "No Private Right of Action." I am strongly opposed to ACIR's fourth recommendation, to require that any court challenge based on IDEA be brought by State or Federal agencies, not parents. My opposition is based on the following considerations:

(A) Depriving parents and students of the ability to vindicate their rights under IDEA in court, if necessary, is fundamentally inconsistent with the intent of the law to create individual rights in those parents and students, and would call into question the nature of the "rights" created.

(B) While one of the objectives of the Administration's proposal is to promote means of settling disputes between parents and school systems without using litigation, the amount of litigation spawned by IDEA is not disproportionate. IDEA serves each year approximately 5.4 million disabled children in approximately 16,000 school districts across the country, and according to ACIR's study, there were 61 reported cases in the Federal courts under IDEA in calendar year 1994--on average, slightly more than one in each State.

(C) Without correspondingly large increases in funding for Federal enforcement staff (e.g., investigators, resolution experts, and litigators)--an unlikely result in today's climate, and not called for by the draft staff report--IDEA enforcement would be substantially undermined. Even if additional Federal resources were available, it is hard to see how further

Page 3 - Honorable William Winter

"Federalizing" the enforcement function, of necessity involving intrusive investigations and Federal versus State litigation, would promote intergovernmental harmony and cooperation.

(D) As a practical matter, because the rights conferred on disabled students and their parents by IDEA are rooted in the non-discriminatory principles of other Federal laws that may be enforced through a private right of action (e.g., section 504 of the Rehabilitation Act of 1973 and the Equal Protection Clause of the Fourteenth Amendment), it is unlikely that such parents and students would be kept out of the Federal courts merely by removing IDEA's cause of action.

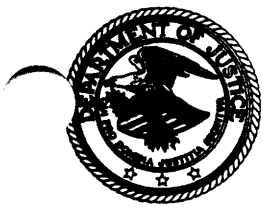
Another weakness of the draft staff report is that it does not recognize that reform of IDEA is a major priority of this Department, consistent with our mission of promoting education of high quality for all children, and that reform is well under way. Following extensive consultation with over 3,000 parents, educators, and administrators, representing the widest possible spectrum of views, the Administration presented its legislative proposal for the reform and reauthorization of IDEA to Congress on June 30, 1995. With an overall goal of improving educational results for children with disabilities, that proposal anticipated several concerns raised by ACIR and incorporates numerous suggestions for reducing burden. Among the basic objectives of our reform proposal are reducing administrative burden and paperwork for State and local school systems and promoting the resolution of disagreements between parents and schools through mediation rather than litigation.

In closing, let me point out that the benefits of IDEA to America have been significant. Through IDEA programs, millions of students with disabilities have been helped to become fully participating, working members of our society rather than be dependent on public funds. Before the IDEA, some one million children with disabilities were totally excluded from the public school system, and another four million did not receive appropriate educational services to enable them to have full equality of opportunity. Since 1976, the number of disabled children served has increased by 44 percent.

I appreciate this opportunity to express my deep concerns about the discussion and recommendations pertaining to IDEA in the draft staff report. I regret that, for the reasons described above, I consider the inclusion of IDEA in the report, as well as the draft proposed recommendations, to be unacceptable.

Yours sincerely,


Richard W. Riley



Office of the Attorney General
Washington, D. C. 20530

February 8, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission
on Intergovernmental Relations
800 K Street, N.W.
Suite 450, South Building
Washington, D.C. 20575

Dear Governor Winter:

I am writing to respond to the recommendations with respect to the Americans with Disabilities Act of 1990 (ADA) that were recently published for public comment by the U.S. Advisory Commission on Intergovernmental Relations (ACIR). These recommendations are apparently based on the significant misperception that the ADA imposes expensive requirements on state and local governments under inflexible deadlines.

The ACIR preliminary report was issued pursuant to title III of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48, which requires ACIR to conduct a study on the effect of Federal mandates on state and local governments, and to report to the President and to the Congress. However, the Unfunded Mandates Act expressly provides that "the Act shall not apply to any Federal regulation that establishes or enforces any statutory rights that prohibit discrimination on the basis of . . . disability." Despite this statutory restriction, the ACIR report recommends significant changes in the ADA and its implementing regulations as they apply to state and local governments.

The ACIR commendably recognizes the ADA's vital role in meeting this nation's obligation to ensure that citizens with disabilities are not excluded from the mainstream of American life. However, ACIR's preliminary report recommends significant changes in ADA implementation. I am concerned that these recommendations, if implemented, would seriously undermine the nation's effort to meet its obligations to people with disabilities.

Unfortunately, as noted, the ACIR report relies on the significant misperception that the ADA imposes expensive requirements on state and local governments under inflexible deadlines. In fact, the ADA is both flexible and reasonable. The statute was carefully crafted to protect the right of people with disabilities to participate in community activities while, at the same time, avoiding the imposition of undue burdens on

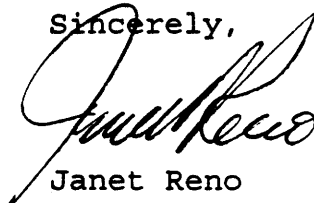
The Honorable William F. Winter
Page 2

public entities. Following precedent developed under section 504 of the Rehabilitation Act of 1973 (section 504) which prohibits discrimination on the basis of disability by recipients of Federal funds, the ADA generally permits state and local governments to exercise substantial discretion in determining how to make their programs accessible. In addition, cost is appropriately considered in determining what the ADA requires and whether compliance deadlines apply.

One example of the inherent flexibility in the ADA is the implementation of the requirement for the installation of curb ramps. The ADA requires public entities to install curb ramps to provide access to existing sidewalks if it is necessary to provide program access and if it can be accomplished without incurring undue financial and administrative burdens. This requirement is not new; it has applied to public entities subject to section 504 since 1977. In 1991 the Department of Justice's ADA regulation extended this requirement to public entities not subject to section 504. The regulation established January 1995 as the compliance deadline for the installation of required curb ramps, but provided that if necessary modifications could not be achieved without incurring undue financial burdens, those modifications would not be required to be completed within this time period. Since that time, in response to concerns expressed by members of Congress and others, the Department has proposed further extensions of time for compliance. The proposed extension of the compliance deadlines for the installation of curb ramps demonstrates that the ADA, in its present form, is being implemented in a way that permits state and local governments to consider local economic realities in making ADA determinations.

The Administration shares the ACIR's commitment to achieving effective implementation of the law without imposing excessive costs on state and local taxpayers. We believe, however, that the specific recommendations ACIR has made with respect to the ADA will not be effective in ensuring that the rights of people with disabilities are protected. To assist you in refining the ACIR recommendations, the Administration will provide more detailed comments on the ACIR report during the public comment period. I look forward to working with you in the future on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", written in dark ink.

Janet Reno



U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, DC 20537

The Role
of
Federal Mandates
in Intergovernmental Relations
A Preliminary ACIR Report
January, 1996

AMERICANS WITH DISABILITIES ACT (ADA)

The U.S. Advisory Committee on Intergovernmental Relations (ACIR) has published a preliminary report pursuant to title III of the Unfunded Mandates Reform Act of 1995, which requires ACIR to study the effect of Federal mandates on state and local governments and to recommend changes. Although the Unfunded Mandates Act expressly provides that "the Act shall not apply to any Federal regulation that establishes or enforces any statutory rights that prohibit discrimination on the basis of disability," the Americans with Disabilities Act (ADA) and its implementing regulations are addressed in this report.

Summary: DOJ Response to ACIR Report

The report expressly recognizes that the ADA mandate is necessary because national policy goals justify its use; however, it recommends significant modifications in the implementation and enforcement of the Act. Those recommendations are based on some significant misperceptions of the ADA requirements. The law and its implementing regulations and this Administration's enforcement policies already address ACIR's concerns.

The ACIR's assertion that the ADA is "one size fits all" legislation replete with "rigid requirements" simply misses the mark. The ACIR report fails to recognize the inherent flexibility of the ADA and its implementing regulations. For example, states and localities are only required to provide "program access" rather than total retrofit of all facilities; states and localities may use the law's "undue financial or administrative burden" defense in complying with the program access and effective communications requirements. This defense also provides states and localities additional flexibility in meeting compliance deadlines.

The ACIR's misperceptions and specific recommendations are discussed below.

1) ACIR concern: The ADA creates problems for state and local governments because of expensive retrofitting and service delivery requirements.

→ The ADA does not require expensive retrofitting or impose expensive service delivery requirements. As a result of the extensive negotiations that accompanied the passage of the ADA, the Act includes a number of provisions designed to ensure a fair and balanced approach to the implementation of the Act, including the cost of implementation. The statute includes specific limitations that recognize the need to strike a balance between the right of individuals with disabilities to participate in public activities and the legitimate financial and operational concerns of state and local governments.

The ADA does not require "expensive retrofitting." Title II of the ADA prohibits discrimination on the basis of disability by state and local governments, but it does not prescribe rigid requirements to achieve that objective. The ADA requires state and local governments to provide "program access." This means that they are required to make their programs and activities, not every existing building, accessible to qualified individuals with disabilities.

Program access provides state and local governments with the opportunity to be creative and flexible in their response to the Act. For example, a service customarily provided in an inaccessible location can be moved to an accessible space when a person with a mobility impairment needs access to that service. For existing facilities, physical changes are only required when it is not possible to provide program access in any other way.

In addition, the ADA does not impose expensive service delivery requirements. Although states and localities will undoubtedly incur costs in implementing the ADA, state and local governments are never required to take any action that would result in a "fundamental alteration in the nature of a program, service, or activity" or in "undue financial and administrative burdens."

The ADA requires that new buildings and facilities, and alterations to existing buildings and facilities, be built to be accessible. This sensible requirement recognizes that it is easiest and least expensive to build in access from the start.

2) ACIR concern: The ADA statutory language is confusing and ambiguous.

The ADA is based on the familiar language and requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits disability-based discrimination by recipients of

Federal financial assistance, including state and local governments. Title II merely extends this prohibition to state and local programs that do not receive federal funds.

Therefore, state and local governments have had over twenty years to become familiar with terms such as "reasonable accommodation" and "undue hardship" and courts have had a similarly long period to develop case law under the Act. The only "novel" term used in the ADA is "readily achievable" and that term applies only to certain private entities covered by title III of the ADA. It does not apply to state and local governments (which are covered by title II).

The purpose of using these familiar terms was to ensure that state and local governments retained the flexibility required to enable each entity to develop its own method of complying with the ADA, in light of its unique circumstances in a changing environment.

ACIR correctly notes that state and local governments have a better understanding of their specific accessibility problems and how to address them. It recommends modifying the ADA to change its orientation from "rigid requirements toward a focus on goals and goal attainment schedules."

The ADA appropriately focuses on the broad goal of eliminating disability-based discrimination. And, by employing some of the concepts criticized by ACIR, it does precisely that. For example, the purpose of the "undue burden" defense is to allow each government to decide what actions to take in light of the resources available for use in the funding and operation of a service, program, or activity.

However, there is an inconsistency between ACIR's recommendation that the ADA be modified to prohibit the imposition of strict and rigid requirements and its criticism of the provisions of the ADA that already give state and local governments the flexibility to adapt to changing local conditions. ACIR should look again at the terms it previously found objectionable in light of the rich history of state and local governmental practices, agency interpretations, and judicial decisions.

3) ACIR Recommendation: Federal funding for ADA compliance should be increased or the ADA should be modified to allow state and local governments to meet ADA substantive requirements and compliance deadlines in a manner that recognizes their technical and budget constraints.

The ADA is a civil rights statute. As such, it has been expressly exempted by Congress from this "unfunded mandates" review because it is simply not acceptable to condition the civil

rights of citizens with disabilities on the availability of Federal grants to state and local governments.

The ADA is emphatically not "one size fits all" legislation. As noted above, the ADA regulations provide considerable flexibility to state and local governments in determining how to best implement the law. Rather than imposing inflexible substantive requirements, the title II regulation requires state and local governments to conduct a self-evaluation (to identify problems and facilitate the process of establishing compliance goals) and to develop a transition plan that establishes a schedule for attaining these goals. Every item in the transition plan, including its completion date, is subject to the caveat that it is not required if it constitutes a fundamental alteration or results in an undue burden. Therefore, the compliance deadlines are inherently flexible. In addition, the Department of Justice is now proposing to amend the title II regulation to clarify the compliance deadlines applicable to the installation of curb ramps.

These requirements empower state and local governments and make it possible for each community to create a plan and a schedule for reaching the goals of the ADA that take into account the specific needs of that community and the resources available to meet those needs.

4) ACIR Recommendation: A single Federal enforcement and assistance agency should be designated to coordinate enforcement and technical assistance.

This recommendation is apparently based on the misplaced concern that Federal enforcement of the ADA is uncoordinated and divided among too many departments and agencies of the government. The development and implementation of the ADA enforcement policies applicable to most units of state and local government is, in fact, limited to two Federal agencies: the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing the ADA's prohibition on employment discrimination, and the Department of Justice, which is already responsible for coordinating the implementation and enforcement of all title II requirements except for the requirements that apply only to public transportation providers, which fall within the jurisdiction of the Department of Transportation. "ADA lawsuits filed by the Federal government that involve state or local governments will be filed only by the Department of Justice."

The preliminary report correctly notes that eight Federal agencies have been assigned an enforcement role under title II of the ADA. However, the report fails to note that the enforcement authority of these agencies under title II is limited to the ability to investigate complaints of discrimination and to

attempt to negotiate resolution. All eight agencies are required to follow DOJ's regulation and enforcement policies. As a result, state and local governments are not subject to conflicting or inconsistent standards.

The agencies designated to investigate title II complaints were selected because of their expertise in the regulated subject matter. These agencies have well-established programs to investigate Section 504 complaints against recipients of Federal financial assistance. Because title II complaints frequently allege violations of Section 504 as well, the designated agency system reduces the burden on state and local agencies by allowing a single agency to investigate both violations at the same time.

This system also assures state and local governments that investigations will be carried out by an agency familiar with the nature of their programs and the constraints they operate under. For example, complaints about schools are investigated by the Department of Education; complaints about access to parks are investigated by the Department of the Interior. If all investigations were consolidated in one agency, a great deal of expertise would be lost.

To date, the system has worked well. There is no evidence that consolidating all responsibility for technical assistance and investigations in a single bureaucracy would benefit state and local governments.

5) ACIR Recommendation: Lawsuits against state and local governments should be limited to actions brought by the Federal government.

This recommendation apparently stems from ACIR's concern that the ability of individuals to sue may create enormous litigation costs and administrative uncertainty for state and local governments. As applied to the ADA, this recommendation is unacceptable because it would mean that Americans with disabilities would be singled out as the only people unable to seek the assistance of the courts to enforce statutorily protected civil rights.

It is preferable to implement the ADA through voluntary compliance or, when disputes arise, through alternative means of dispute resolution. However, alternative dispute resolution, to be successful, must be accompanied by a strong enforcement policy. If private individuals are unable to sue to enforce their own rights, public entities will have no incentive to comply with the law.

6) ACIR Concern: The Federal government has not provided sufficient technical assistance to help entities comply with the ADA.

The Federal government has mounted an unprecedented effort to provide technical assistance about the ADA and is actively pursuing opportunities to expand this effort. Each of the Federal agencies that has an ADA policy-making role has established an extensive technical assistance program to provide covered entities with information about how to comply with the ADA.

Technical assistance is developed through Federal grant programs under which private entities develop specialized materials targeted to specific audiences. Through a Department of Justice grant, selected ADA Technical Assistance materials have been distributed to 15,000 libraries nationwide. The Department of Education has funded a regional network of ten Disability and Business Technical Assistance Centers that provide ADA information and guidance to covered entities. In addition, the Department of Justice is considering a proposal to establish an ADA clearinghouse of technical assistance materials.



U.S. Department of Justice

Office of Policy Development

Assistant Attorney General

Washington, D.C. 20530

March 29, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, D.C. 20575

Dear Governor Winter:

I am writing on behalf of the Department of Justice with regard to the discussion of federal mandates addressed in Preliminary Report of the Advisory Commission on Intergovernmental Relations ("ACIR"), entitled The Role of Federal Mandates in Intergovernmental Relations.¹ This letter supplements the concerns already expressed in letters from Attorney General Janet Reno by letter of February 8, 1996, and from Marcia Hale, Assistant to the President and Director for Intergovernmental Affairs by letter of March 1, 1996, regarding the recommendations in the preliminary report and the staff working papers concerning the Americans with Disabilities Act of 1990 (ADA) as well as the environmental laws.

The ACIR preliminary report was prepared pursuant to title III of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48. Section 302 of the Act requires the ACIR to conduct a study on the effect of Federal mandates on State and local governments and to report on its findings. However, we are concerned that the preliminary report and the staff working papers reach unfounded conclusions based on inadequate analysis, and we hope to work with the Commission to address the Department's concerns before the Final Report is issued. Our concerns are summarized below and explained more fully in the enclosed attachments.

The Americans with Disabilities Act

Section 4 of the Unfunded Mandates Act expressly provides that "the Act shall not apply to any Federal regulation that establishes or enforces any statutory rights that prohibit discrimination on the basis of . . . disability." Despite this exclusion, the preliminary report recom-

¹ These comments address the version dated (at p. 1) January 5, 1996, which includes as Appendix A the "Staff Reviews of Mandates" (dated December 1, 1995).

mends significant changes in the ADA and its implementing regulations as they apply to State and local governments.

In our view, the changes recommended by the preliminary report would seriously undermine the nation's efforts to provide equal opportunity for people with disabilities. Therefore, the Department strongly urges the ACIR to reconsider these recommendations as they apply to compliance and enforcement, and delete them from the Final Report.

The staff working paper that was published along with the preliminary report indicates some concern that public entities need more technical assistance from the Federal government to facilitate ADA compliance. The Department shares this concern. Under title V of the ADA, each Federal agency that is authorized to issue ADA implementing regulations is required to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. The Department of Justice coordinates ADA technical assistance government-wide, conducting reviews of materials developed by other agencies to ensure accuracy, chairing an ADA Technical Assistance Coordinating Committee, and other initiatives. Although we believe that Department has been successful in providing ADA education to millions of people, we believe that there is still more that could be done. We would welcome the assistance of the ACIR in an effort to expand and improve the technical assistance programs government-wide.

Environmental Issues

In general, the Department believes that the Final Report should reflect the significant efforts the Administration has made to increase flexibility for state and local governments in implementing federal programs. The Final Report should also reflect the legitimate health, welfare, safety and environmental concerns underlying federal statutory requirements. The draft report is largely a reiteration of complaints without an independent analysis of each alleged unfunded mandate, its burdens and benefits. The Final Report should also distinguish between federal "mandates" that require the state or local government to exercise some governmental/regulatory function in a particular way and other federal mandates that simply require all persons engaged in a particular activity to meet the same standards. Several of the statutes described as "mandates" within the scope of the ACIR draft report and staff working papers are actually mandates of the latter category, for which a distinction between governmental and private actors is either inappropriate or represents a fundamentally different policy issue.

One of the most significant policy concerns for the Department is the draft recommendation that individuals be barred from enforcing federal laws against state and local governments. See ¶ 4, page 5. The preliminary report provides no discussion of how this proposal would deprive citizens who are adversely affected by violations of an opportunity to obtain enforcement of the very statutes designed to protect them. As a practical matter, this proposal would severely limit the enforcement of federal law and its deterrent effect.

Conclusion

Thank you for the Commission's responsiveness to the concerns that have been raised regarding the issues discussed in the preliminary report. The two attachments to this letter

provide additional information for your consideration. If you require additional information or assistance as the Commission develops its final report, we would be happy to assist you. We look forward to working with you in the future on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Eleanor D. Acheson" followed by a horizontal line.

Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development

Attachments

THE AMERICANS WITH DISABILITIES ACT

The preliminary report recognizes that the Americans with Disabilities Act of 1990 (ADA) provides "important and necessary social benefits," but it nevertheless recommends sweeping and potentially destructive modifications to both substantive and procedural aspects of the law because it finds that the ADA "is creating problems for state and local governments." It is apparent from reading the preliminary report that most, if not all, of the "problems" that it perceives result from significant misperceptions about what the ADA actually requires. This misunderstanding is particularly significant with respect to the cost of implementing the ADA. However, the preliminary report also appears to misunderstand the roles of Federal agencies and individuals with disabilities in ADA enforcement.

ADA COMPLIANCE

The preliminary report is filled with references to costs -- the anticipated costs of "expensive retrofitting and service delivery requirements," the anticipated costs of lawsuits arising out of the ADA's "ambiguous statutory language," and the penalties for noncompliance. The preliminary report proposes two solutions to the cost problem: either Federal funding for ADA implementation should be increased or substantive provisions and compliance deadlines should be modified to allow state and local entities to comply in way that recognizes state budgetary constraints. Both of these "solutions" address a nonexistent problem.

The ADA was passed in 1990 with overwhelming bipartisan support. The concerns now being raised by the preliminary report were considered by Congress prior to the enactment of the ADA. As a result of the extensive negotiations that accompanied the passage of the ADA, the Act includes a number of provisions designed to strike a balance between the right of individuals with disabilities to participate in public activities and the legitimate financial and operational concerns of state and local governments. Rather than prescribing stringent requirements, Congress chose instead to empower state and local governments by allowing them to take into account the specific needs of each community and the resources available to meet those needs. As Senator Dole stated in the final Senate debate on the ADA, "it is a just and fair bill which will bring equality to the lives of all Americans with disabilities." As the Department has previously noted, the ADA is emphatically not inflexible, "one size fits all" legislation.

The ADA regulations already provide state and local governments with considerable flexibility to determine how to best implement the law. At its most basic, title II of the ADA requires covered entities to provide "program access," that is, to provide access to government programs, services, and activities. Physical renovations are only required if programs and activities can not be made accessible in any other manner.

Instead of dictating the changes to be made, the title II regulation requires state and local governments to engage in a process of self-evaluation. After identifying barriers to access and setting compliance goals, each public entity is required to develop a transition plan that establishes a schedule for making any structural changes necessary to achieve program accessi-

bility. Every item in the transition plan, including its completion date, is subject to the caveat that it is not required if it constitutes a fundamental alteration or results in an undue burden. As a result, both substantive requirements and compliance deadlines are flexible and allow decisions to be made in light of the resources available to each community. Thus, the preliminary recommendation that the ADA be amended to permit state and local governments to meet ADA goals in a manner that recognizes the constraints they face is unnecessary because the ADA already anticipates that the fiscal concerns of covered public entities will be a factor in their ADA implementation decisions.

With respect to the alternative recommendation, that Congress appropriate funds to pay for ADA compliance, the Department believes that, although it is surely within the discretion of the Congress to appropriate funds to facilitate ADA compliance, it is totally inappropriate to make the civil rights of citizens with disabilities contingent on the availability of Federal grants.

ADA TECHNICAL ASSISTANCE AND ENFORCEMENT

The preliminary report also recommended that a single Federal agency should be designated to coordinate all ADA technical assistance and enforcement activities. This recommendation is apparently predicated on the belief that having a single enforcement agency will make it easier for state and local governments to comply. The Department believes that this recommendation, if implemented, would complicate, not simplify, ADA implementation.

Technical Assistance

Under title V of the ADA, each Federal agency that is authorized to issue ADA implementing regulations is required to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. The Department of Justice coordinates ADA technical assistance government-wide, conducting reviews of materials developed by other agencies to ensure accuracy, chairing an ADA Technical Assistance Coordinating Committee, and other initiatives.

In providing technical assistance, the Department promotes voluntary compliance with the ADA by providing free information and assistance to businesses, state and local governments, people with disabilities, and the general public. Each year, more than 1 million people are assisted by the Department and our technical assistance grantees.

In addition, the Department operates a toll-free ADA Information Line receiving 75,000 calls a year; develops and disseminates ADA publications; provides ADA training at meetings nationwide; conducts outreach to broad and targeted audiences that have included mayors, local Chambers of Commerce, and millions of businesses; and, through grants, works with trade associations and others to develop and disseminate materials tailored to meet the needs of specific audiences, including town officials, law enforcement officers, and others in the public sector.

The Department also produces a wide range of technical assistance documents, including technical assistance manuals and yearly updates; *ADA-TA*, a technical assistance series aimed at businesses, state and local governments, architects, and others explaining efficient ways to comply with the ADA; and question-and-answer publications on specific topics. These and the ADA regulations may be ordered from the Department or obtained electronically through the our electronic bulletin board or the Internet and the Department's technical assistance materials and those developed by grantees are disseminated to 15,000 local public libraries.

The Department is committed to ensuring that effective ADA technical assistance is provided to the public and we would welcome ACIR's support for this effort.

Enforcement

As the Department's earlier comments pointed out, the primary responsibility for the development and implementation of the ADA enforcement policies is now assigned to two Federal agencies: the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing the ADA's prohibition on employment discrimination, and the Department of Justice, which is responsible for coordinating the implementation and enforcement of the requirements applicable to most state and local programs. These agencies have established close working relationships with each other to ensure consistency in policy matters. Only the Department of Justice may file ADA lawsuits against state or local governments.

Other agencies that have a role in ADA policy development are the Department of Transportation, which develops and implements the ADA requirements applicable to transportation providers; the Federal Communications Commission, which regulates the telecommunications relay system required by the ADA's amendments to the Communications Act of 1934; and the Architectural and Transportation Barriers Compliance Board, which develops guidelines for the accessible design of buildings, facilities, and vehicles subject to the ADA.

The other Federal agencies that have ADA enforcement roles derive their authority from regulations issued by the Department of Justice under title II. These agencies implement policies established by the Equal Employment Opportunity Commission or the Department of Justice in conducting ADA investigations. These "designated agencies" are responsible for investigating, and attempting to resolve, complaints alleging violations of title II by public entities that are provide programs and services that fall under functional areas in which a designated agency has expertise.

The designated agencies and their areas of responsibility include:

- 1) Department of Agriculture (farming, raising livestock, and operating agricultural extension services).

- 2) Department of Education (libraries, elementary and secondary education, and post-secondary education (other than schools of medicine and other health-related professions).
- 3) Department of Health and Human Services (health care and social services, medical and other health care-related schools, community services organizations, and preschool and day care programs).
- 4) Department of Housing and Urban Development (public housing and housing assistance programs).
- 5) Department of Interior (lands and natural resources, water and waste management, environmental protection, energy, historic and cultural preservation, and museums).
- 6) Department of Labor (labor and the work force).
- 7) Department of Transportation (transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing).

The Department of Justice retains responsibility for law enforcement, public safety, courts and correctional institutions; economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation: state and local government support or administrative services, and any other government functions not assigned to designated agencies.

These agencies were designated to implement title II because each of them had considerable experience in implementing section 504 of the Rehabilitation Act of 1973 (section 504) as it applies to public entities that receive Federal financial assistance from these agencies. These responsibilities were assigned to these agencies under section 504 long before the ADA was enacted, and they remain in effect. Because most alleged violations of title II by a public entity that receives Federal funding would also violate section 504, delegating authority to these designated agencies to investigate title II complaints serves to reduce the expenditure of government funds by enabling a single agency to investigate each complaint that may violate both statutes. Consolidating title II enforcement authority in a single agency would increase, not alleviate, the burden on public entities because public entities could then face separate investigations of each fact situation that might constitute a violation of both title II and section 504.

In addition, consolidating the ADA investigatory authority in a single agency would deprive both individuals with disabilities and state and local government agencies of the benefits derived from having investigations conducted by designated agency personnel who have subject matter expertise with respect to the operation of the program that is being investigated. For example, the Department of Education investigates complaints against school systems because

of the agency's knowledge about the day-to-day operations of schools and their experience in school funding programs. The agency also has expertise about other statutory obligations that may affect a school district's ability to comply with the ADA. Similarly, the Department of Transportation, in investigating title II complaints against public transportation providers applies not only its knowledge of the ADA and section 504, but also the subject matter expertise derived from its obligations to provide Federal financial assistance to ensure the effective operation of transportation systems.

The Department of Justice has seen no evidence that consolidating all responsibility for technical assistance and investigations in a single bureaucracy would benefit state and local governments. To the contrary, we believe that consolidating ADA authority in a single agency would make implementation unnecessarily difficult by removing the enforcement authority from agencies that have the best understanding of the specific program constraints faced by state and local agencies.

Enforcement by Private Litigants

Finally, the Department wants to reiterate its objection to the preliminary recommendation to eliminate the role of private litigants in ADA enforcement. This recommendation is fundamentally unfair. To make individuals with disabilities dependent on Federal government intervention to resolve disputes with their state and local governments would unacceptably deprive these citizens of the right to seek judicial protection of their civil rights without reliance on government intervention. It is particularly inappropriate to single out people with disabilities as the only group protected by the Federal civil rights laws that would lose their right to a private right of action.

Furthermore, the ADA's private right of action has not led to an explosion of title II litigation. In an informal July 1995 survey we found that there had been fewer than 500 ADA lawsuits filed nationwide that involved state or local governments. In fact, most complainants seek to resolve their complaints in other ways, using the Federal administrative remedies, alternative dispute resolution, or using state and local grievance processes. Therefore, eliminating the private right of action under title II would have minimal effect in terms of reducing the actual burden of ADA compliance for state and local governments, while at the same time sending the message to individuals with disabilities that they are less entitled than other citizens to seek judicial redress of their rights.

ENVIRONMENTAL MANDATES

As an initial matter, it should be noted that the Administration has made significant efforts to increase flexibility for state and local governments in implementing environmental programs. The Final Report should reflect those efforts. For example, the Department's Environment and Natural Resources Division works closely with state and local enforcement agencies in enforcing environmental law. It has emphasized cooperative enforcement through joint enforcement actions, through training and support of local prosecutors, and in the development of enforcement policy. The Division frequently works with state attorneys general and environmental agencies, local prosecutors, and the National Association of Attorneys General (NAAG). In addition, the Division coordinates its litigation on behalf of the Secretary of Interior for the benefit of Indian tribes with the affected tribe.

The preliminary report appears to be largely based on complaints by some representatives of state and local governments and not an independent analysis of each alleged unfunded mandate. As a result, the preliminary report fails to appropriately take into account the health, welfare, safety and environmental concerns underlying the statutory requirements. For example, the Clean Water Act and the Clean Air Act were a federal reaction to a national pollution problem that the state and local governments had been unable to solve. The detailed requirements and sanctions imposed by the Clean Air Act amendments of 1990 (criticized on page 14) were enacted only after many localities failed to meet repeated deadlines for air quality standards.

The preliminary report provides no factual basis by which the Commission could determine whether a particular mandate is unnecessary; rather, it reports what survey respondents thought was burdensome. We appreciate that lack of funding precluded a more analytical approach. However, the Commission should make recommendations to Congress based on facts, not reiterate anecdotes and complaints. The methods used in the preliminary report are inadequate to analyze whether the congressional goals of clean air, clean water, protection of species, etc., can be met if the preliminary report's recommendations are adopted. For example, the preliminary report recommends establishing "a long-term goal of returning to the states full responsibility for safe drinking water standards," and notes that "prior to 1974, states had responsibility for the safety of drinking water, but * * * generally relied on standards set by the Public Health Service." Preliminary Report at 13. The preliminary report fails to acknowledge, however, that before enactment of the Safe Drinking Water Act (SDWA) in 1974, more than one-third of tap water samples evidenced bacterial or chemical contamination exceeding the voluntary Public Health Service limits. Fifty-six percent of systems had physical deficiencies that could seriously affect safety. Sixty-nine percent of systems failed to test half the basic microbial samples recommended by Public Health Service. The SDWA has brought real progress, which this report should acknowledge.

At several points, the preliminary report proposes an untenable choice between increased federal funding for environmental infrastructure, such as sewage treatment plants, and decreased protection for communities and their environment. For example, the preliminary report's discussion of the Clean Water Act suggests that state and local governments should not be

required to comply with federal environmental standards absent federal funding. The preliminary report should reflect that the concept that polluters must comply with the law and pay for the contamination they cause applies universally to all polluters, not just state and local government. Local governments operate sewage treatment systems, public water supplies, and landfills. It is the nature of these activities, not the nature of the entity which operates them, which requires compliance with environmental laws. Additional federal funding for publicly owned treatment works may well be desirable. However, the lack of federal funds does not, and should not, discharge the industrial and domestic users of these municipal systems from responsibility for preventing environmental harm by their activities.

The preliminary report recommends that individuals not be permitted to bring lawsuits against state and local governments to enforce federal requirements. See ¶ 4, page 5. This recommendation would limit enforcement against state and local governments to federal agencies. That would eliminate the ability of those citizens who are adversely affected by environmental violations to seek enforcement of statutes designed to protect them. As a practical matter, it would severely limit the enforceability of federal law and its deterrent effect because cities and states could logically assume the likelihood of enforcement would be significantly reduced. At a time when many are calling for reduced federal oversight and smaller federal budgets, it would be particularly problematic to eliminate citizen enforcement, which provide direct redress for citizens and communities affected by violations of federal law without increasing federal bureaucracies. In addition, the Final Report should recognize that state and local governments have themselves used the citizen suit provisions, on occasion, to bring suit.

This recommendation to eliminate citizen enforcement fails to recognize an important distinction between two different types of federal "mandates" -- mandates that require the state or local government to exercise some governmental/regulatory function in a particular way, and mandates that simply require all persons engaged in a particular activity to meet the same standards. But the recommendation suggests that citizen suits should be barred from even this limited class of cases. In our view, citizen suits for this kind of non-compliance are entirely appropriate.

Finally, the preliminary report should be revised to acknowledge the intent of federal laws reviewed, and to address misstatements of fact and law contained in its description of the following federal statutes.

Safe Drinking Water Act (SDWA) -- First, both the preliminary report and the first paragraph of the "Background" section of the staff preliminary working paper state that "There are an estimated 58,530 systems * * *. While 15,740 systems are privately owned, 82 percent of the urban systems are government owned." This suggestion, that only about 25 percent of water systems are private, is in error. According to EPA, approximately half of the nation's water systems are privately-owned, for-profit businesses.

Second, these descriptions reiterate "concerns" of owners and operators of water systems have about "being held equally accountable for violations that are genuinely health related and

for failure to follow exactly prescribed schedules or testing procedures." Compliance with testing procedures is fundamental to the protection of public health. If water systems are allowed to avoid testing, serious contamination problems could develop without the public of the water system being aware. Moreover, state and federal enforcement is directed at patterns of serious violation, not minor transgressions. For example, in fiscal year 1994, more than 43,000 water systems recorded violations, but there were only a combined total of 1384 state and federal formal enforcement actions. Finally, as with many environmental statutes, most of the enforcement is done by the states: In fiscal year 1994, states brought more than 1,000 formal enforcement actions, while the federal government brought only 367 (mostly administrative actions).

Endangered Species Act (ESA) -- The preliminary report's discussion of the ESA reflects numerous fundamental misunderstandings about the requirements of the ESA and how they are administered by the Departments of Commerce and the Interior. In particular, the chapter fails to acknowledge that the Section 7 consultation requirements for federal permits or other actions that may affect threatened or endangered species apply to federal agencies and private parties in the same way as they apply to "state, local and tribal projects." Most significantly, the preliminary report's statement that state, local and tribal projects must comply with federal standards or "very specific uniform standards for protecting endangered species" is unfounded. There are no uniform standards for endangered species protection that must be complied with in order to obtain a federal permit, license or other approval. The preliminary recommendation for more extensive exemptions to "minimize social and economic impact" does not appear to be based on any showing that species conservation has had any significant impact, much less that such impact could constitute an "unfunded mandate."

The "Background" section of the staff preliminary working paper further overstates the extent of federal power to "conserve and recover listed species" and its impact. Federal agencies do not have authority to "target" state parks for protection and recovery efforts. Such non-federal entities do not have specific conservation obligations under the ESA, and voluntarily participate in those federal conservation efforts. Moreover, the ESA provides authority to restrict actions on private property only indirectly, where federal agency actions require consultation under Section 7, or where a private action implicates the Section 9 take prohibition.

The preliminary report does not reflect important amendments to the ESA that have provided for state and local involvement in species conservation, including state cooperation and habitat conservation planning provisions; nor does it reflect the manner in which the Departments of the Interior and Commerce have administered the ESA. For example, the Department of the Interior relies extensively on a habitat conservation process, coordinated with state, local and tribal governments, that was provided by the 1982 amendments to the ESA. The "Issues of Concern" and "Recommendations Options" sections also ignore provisions of the ESA that are used to take account of the interests of state, local and tribal governments, and "balance" these interests with the need for a particular species' protection. The sections' description of "jeopardy" findings and economic impacts imply that such impacts are widespread, rather than a rare occurrence. We agree that one goal should be better planning and coordination with state and local governments to prevent the need for listing species and protect and manage declining

ecosystems. The Departments of Commerce and the Interior have made such coordination and planning a priority.

Clean Air Act (CAA) -- The preliminary report's recommendation -- no penalties or reductions in aid where a State fails to comply with the CAA -- would undermine the Nation's efforts to protect and restore air quality. State failure to comply with the CAA was well documented at the time that the 1990 CAA Amendments provided additional authority for financial penalties. A recommendation to immunize any entity from compliance would result in dirtier air and significant interstate public health impacts. The Final Report should note the potential cost, particularly to health and the environment, of its recommendation. The federal government recognizes the value in making the CAA more state-friendly, and to that end it has initiated many significant efforts and proposals for the administration of the CAA that should also be described in the Final Report.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

MAR 1 1996

The Honorable William F. Winter
Advisory Commission on Intergovernmental
Relations
800 K Street, N.W.
Suite 450
Washington, D.C. 20575

Dear Governor Winter:

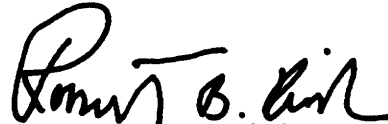
The purpose of this letter is to express the Department of Labor's deep concern over the recommendations set forth in The Role of Federal Mandates in Intergovernmental Relations, the preliminary draft report of the Advisory Commission on Intergovernmental Relations (ACIR). Our comments on the draft's specific legislative proposals are contained in the enclosed memorandum. Two issues are of particular concern to the Department.

As stated, the purpose of this preliminary draft report was to propose "...changes in federal policies to improve intergovernmental relations **while maintaining a commitment to national interests**" (emphasis added). The report does not achieve that purpose. In fact, the report's recommendations on labor standards would seriously erode intergovernmental relations and irrevocably harm this country's commitment to American workers by endangering their right to a safe and healthful workplace, to minimum wage and overtime pay, and to family and medical leave in case of a serious family illness or birth of a child. If the recommendations in the report were implemented, state and local government workers would become second class citizens -- deemed unworthy of the same basic protections as their neighbors, friends, and family who work in the private sector or for Federal agencies.

DOL is equally concerned that the ACIR has not taken into account Congress's instruction upon adoption of the Unfunded Mandates Reform Act that the Commission actively consider the impact of its recommendations on American workers, and that the Commission formulate its recommended changes in Federal policies to enhance intergovernmental relations with a view toward maintaining a commitment to vital national interests. We strongly urge the Commission to specifically review its draft recommendations with those dedicated public servants whose employment would undergo profound changes by virtue of the report's recommendation.

Thank you for your consideration of our views. I hope that the comments and concerns raised here will assist the ACIR in completing its work.

Sincerely,



Robert B. Reich

Enclosure

DEPARTMENT OF LABOR CONCERNS RELATIVE TO THE DRAFT REPORT OF THE ACIR

The Department of Labor(DOL) objects not only to the specific findings of this report but also to the method, the criteria and the assumptions the Commission used in making its recommend-dations. The following is a summary of major concerns:

1. The ACIR frequently ignored its own Criteria for Review, which direct the Commission to take into account the positive attributes of mandates, the rationale for their adoption, and the impact of each on working men and women. The report contains no discussion of Congressional intent in covering state and local workers under these statutes and little consideration is given to how workers might be affected if these protections were taken away from them.

There is also very little recognition of the benefits these laws accord state and local government employees – or their employers. In many cases, the report analyzes these basic labor standards as though the only factor to be considered was their effect on state and local government budgets. The rights and protections of workers are treated as though they are merely another yearly "expense."

2. The ACIR's Criteria ignores the directive of the Unfunded Mandates Act to recommend "terminating Federal mandates" only where they are "duplicative, obsolete or lacking in practical utility." Under the Act, "concern" by state and local governments was not to be the basis for recommending termination of a mandate. The Federal Labor Standards Act (FLSA), Federal and Medical Leave Act (FMLA), Davis Bacon Related Acts (DBRA) and the Occupational Safety and Health Act(OSH Act) are certainly not obsolete – the mere fact that DOL continues finding violations proves their continued relevance and utility. Nor are these statutes duplicative – there are no comparable Federal laws and where corresponding state laws do exist, they are often weaker or less inclusive.

3. Many of the concerns used as justification for examining DOL's programs have no bearing on the unique characteristics of state, local, or tribal governments – in fact, they are the same type of concerns attributed to some employers in the private sector.

4. The ACIR's assumption that collective bargaining agreements can substitute for Federal standards is undermined by the fact that only 40 percent of state and local government workers are represented by a labor union and guaranteed collective bargaining rights.

5. Finally, the special role of public employers is ignored – one would expect these governmental entities to be model employers setting examples for their private sector counterparts. In fact, the Congressional Accountability Act recently applied the FLSA, FMLA and other labor laws to Congress to provide those workers the same protections as the private sector counterparts.

Fair Labor Standards Act (FLSA)

The ACIR report recommends repeal of FLSA's coverage of state and local government workers.

By guaranteeing a minimum wage and premium pay when an individual works more than 40 hours week, the FLSA establishes minimum labor standards below which no one should be required to work. There is no reason to deny public servants these fundamental protections and thereby make them second class citizens. In recent years, the provision of public services such as nursing care, transportation, sanitation, water and sewer service, has increasingly been done by both public and private entities, and in these instances, the Act simply ensures that every employee, regardless of his or her employer, is entitled to minimum protections. Allowing state and local governments to pay less than the minimum wage and to avoid paying premium pay for overtime is unfair to the public workers and could place private employers that observe fair labor standards at a competitive disadvantage.

Congress amended the FLSA in 1985 and gave special accommodations to state and local governments by providing for compensatory time off in lieu of overtime pay, special rules for the use of volunteers, and delay in implementing compliance obligations to allow for a transition period. The report notes that the Department of Labor has provided assistance to state and local governments with respect to their FLSA obligations, and acknowledges that DOL has worked with state and local governments to recognize the unique issues that arise in the enforcement context. Despite DOL's efforts, it clear that concern with FLSA can be traced to an inability to adequately monitor compliance and a persistent misunderstanding of the requirements of the Act. These are not reasons for denying workers basic minimum rights, but arguments for strengthening the Department's ability to work with state and local governments, rather than dismantling it. While the report decries the rights of workers to seek judicial redress under the statute, rolling back those rights suggests far more than a restructuring of Federal/State relations. It would deny basic rights to public servants to be paid the minimum wage and overtime pay when they are forced to work excessively long hours.

In several instances, the report levels criticism against application of the FLSA to the public sector that has no foundation in fact. For example, there is no basis for the suggestion made in the report that Federal agencies have been able to manipulate FLSA regulations in order to meet budgetary restrictions.

Family and Medical Leave Act (FMLA)

The report recommends repeal of FMLA's coverage of state and local government employees.

Like the FLSA, the FMLA provides a fundamental safeguard to American workers. It guarantees that workers can take job protected unpaid leave for specified family and medical reasons. The report provides no substantive justification for repealing that safeguard with respect to public workers. The report not only overstates the costs of compliance, but also ignores the substantial benefits achieved by the FMLA, including improved worker productivity and morale, reduced employee turnover, and greater labor-management stability. In fact, available data show that the costs of hiring and training new employees far outstrip the costs of granting temporary leave for family or medical reasons. In addition, the bipartisan Commission on Leave created under the FMLA released two studies in October 1995. The study of employers in the private sector revealed that over an 18-month period, 90 % of participating firms reported little or no costs associated with administration, hiring, and training, and continuation of benefits required under the statute, and 85% reported no noticeable effect on employee turnover, absence or productivity. There is no evidence to suggest that the results are any different in the public sector.

Occupational Safety and Health Act (OSH Act)

The report recommends repeal of all state coverage.

As a preliminary matter, the Department cannot accept the Commission's assertion that a voluntary program constitutes a mandate. It is not a mandate because the only state and local government workplaces covered by OSH are located in states where the state legislature has voluntarily agreed to participate.

In any event, we believe—and many states agree—that repeal of the OSH Act with respect to public workers could endanger the health and safety of thousands of workers who perform some of the Nation's most dangerous jobs – firefighting, hazardous waste cleanup, maintenance and sanitation work. Indeed, according to the American Federation of State, County and Municipal Employees, almost 200 of their members were killed on the job between 1983 and 1993. Public workers deserve the same protections accorded to America's private sector employees.

As with other DOL-related recommendations, the report fails to acknowledge the substantial benefits that accrue from the Act. These benefits are not limited to the health and safety protections for the affected worker; but include public employers, who experience reduced worker compensation costs, higher employee productivity, and reduced liability and insurance costs; and the general public who benefit from a reduction in the exposure to dangerous conditions in public buildings and other facilities.

The ACIR report acknowledges that several of the concerns with the OSH Act rest on misperceptions or a lack of information. For example, the report notes that even in some states that have not volunteered to participate in the Federal Occupational and Safety Administration's program, there is a belief that OSH Act requirements are mandatory. It is difficult to imagine how this makes the case for repeal of the Act. Similarly, the report charges that the credibility of safety and health programs under the Act is seriously compromised by the "perceived" rigidity, complexity and burdensomeness of the regulations, and a focus on punishment rather than compliance assistance. On the contrary, in recognition of the unique characteristics of public employers, OSHA has encouraged flexibility in State plans by 1) encouraging states to develop alternate standards that provide equivalent protection when circumstances differ from the private sector; 2) allowing States to use administrative actions instead of monetary penalties to compel compliance; 3) permitting agency self-inspection under certain conditions. In addition, OSHA provides a great deal of assistance to states that volunteer to participate, and contrary to the ACIR report, punishment is not a focal point of enforcement, since OSHA has no jurisdiction over public workplaces. In fact, an atmosphere of cooperation pervades the Federal/State relationship under the OSH Act, as typified by a Memorandum of Understanding between OSHA and various state regulators to address areas of mutual interest.

Finally, the report suggests that Federal agencies are free from meeting OSH Act requirements, and state and local governments should have the same options. Once again, this premise is incorrect. All Federal agencies must comply with OSHA standards, as the recent debate on extending OSH Act protections to Congressional employees recognized.

Davis-Bacon Related Acts (DBRA)

The report recommends an exemption for projects below one million dollars or for which the Federal grant or other assistance is less than 50 percent of total funding.

The Federal government spends substantial funds to assist state and local governments with local public construction projects through grants and other financial assistance. DBRA prevailing wage requirements, attached to this assistance, ensure that the Federal governments's vast purchasing power does not depress local wage levels or disrupt local economies. However, DOL cannot accept the view of the Commission that DBRA requirements impose an unfunded intergovernmental mandate. The provisions apply by virtue of voluntary participation in these Federal assistance programs.

The ACIR report suggests that the DBRA automatically increase public construction costs because certain low-wage construction contractors may pay lower than prevailing wages. This flawed reasoning ignores any comparative differences in productivity from different wage levels and work experience, and that fact that the shoddy construction practices that often accompany substandard wages almost inevitably result in increased repair and

maintenance costs. The report also ignores the fact that the DBRA prevailing wage is based on "measures of central tendency", and there will always be contractors who pay lower than the prevailing wages in a community.

ACIR claims that DBRA wage surveys are "voluntary and sporadic," but fails to acknowledge DOL's significant regulatory reforms undertaken over the past decade to ensure that its wage determinations accurately reflect wages paid in the local community. They also claim a scarcity of data leads to importation of non-local rates. When there is a lack of recent construction, DOL looks to the surrounding area for wage data, not to "distant" areas as ACIR charges. The report asserts that DBRA may reduce the hiring of local persons with limited experience. In fact, regulatory provisions also encourage apprenticeship and training of persons with limited experience by allowing for exceptions to the journey-level wage under approved training programs.

The Clinton Administration's Davis-Bacon reform bill last year would have raised the DBRA threshold to \$50,000 for alteration and repair projects, and \$100,000 for new construction projects, in addition to reducing administrative burdens and costs. DOL cannot concur in the report's proposal to limit DRBA to projects of more than \$1 million which receive over 50 per cent of their financing from Federal funds. These proposals would eliminate prevailing wage protections for thousands of workers under the guise of reform, and make the administration of Davis-Bacon requirements more troublesome for states and local governments.

Similarly, we have serious concerns with the report's recommendation to base coverage on the percentage of Federal finance provided to the construction project. DBRA coverage must be established before the competitive bidding process begins. ACIR's proposal would disrupt that process, and impose additional burdens on state and local contracting agencies to determine if DBRA applies.



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

March 1, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street N.W.
Washington, DC 20575

Dear Governor Winter:

I have reviewed the preliminary draft of the U.S. Advisory Commission on Intergovernmental Relations Report concerning *The Role of Federal Mandates in Intergovernmental Relations*. I am writing to inform you about a number of concerns that the Department of Transportation has with the recommendations in the preliminary draft report.

Overall Comments

First, Federal mandates generally flow from statutory requirements. My reading of the preliminary draft report indicates that a number of the issues the report raises stem from the underlying statutes, rather than the regulations that implement them. It would be helpful if the final version of the report could clarify this point.

Second, the preliminary draft report does not appear to acknowledge the progress that has already been made in regulatory reform through the Clinton Administration's National Performance Review initiative, as well as the enactment of the Unfunded Mandates Reform Act of 1995 and Executive Order 12875.

USDOT reviewed a number of the specific recommendations in the preliminary draft report, and our comments on those topics are provided below.

Drug & Alcohol Testing

Preliminary Draft Recommendation: Repeal of drug and alcohol testing for state and local government employees driving commercial vehicles (which weigh over 13 tons or carry 16 or more people).

DOT's Comments:

- DOT strongly disagrees with this recommendation, and believes that it should be withdrawn from the final report.
- From a transportation safety perspective, it makes no difference who employs the person driving a commercial vehicle. A motorist is in just as much danger from an impaired state or local employee driving a large truck as from a private company's employee.
- The objective of drug and alcohol testing is prevention, it is a deterrent program. A deterrent program does not fail, as the preliminary draft suggests, because few people test positive.
- Drug and alcohol testing is not inconsistent with the treatment of law enforcement and emergency personnel. In many, if not all cases, local governments already apply their own drug and alcohol testing requirements to these personnel.

Metric Conversion

Preliminary Draft Recommendation: Repeal requirement for metric conversion for plans and specifications as a condition of receiving Federal aid.

DOT's Comments:

- The Preliminary Draft's recommendation appears to be based on an incorrect understanding of current conditions.
- The statutory deadline for the conversion of plans and specifications has been extended from October 1, 1996 to October 1, 2000, under the recently enacted National Highway System Designation Act of 1995.
- A national survey recently conducted by the American Association of State Highway and Transportation Officials (AASHTO) indicated that the vast majority of states have opted to retain September 30, 1996, as their target date for full conversion. FHWA estimates that 82% of the states will have completed conversion by that date.
- As AASHTO has stated, "the time to stop conversion was in 1990, not in 1996...". To repeal the requirement at this time would only create confusion for states and the construction industry.

Americans with Disabilities Act

Preliminary Draft Recommendation: Increase Federal funding for state and local compliance, modifying deadlines to permit compliance within state and local fiscal constraints, creating a single Federal agency for ADA implementation and enforcement, and eliminating the private right of action for suing state and local governments.

DOT's Comments:

- Federal transportation funds already are available to help states and local governments meet ADA transportation requirements.
- Existing ADA provisions already provide extensive flexibility to state and local governments to spread out compliance over a period of years, when financial constraints are present.
- DOT opposes the creation of a single agency to oversee ADA implementation for two reasons. First, in an era of "downsizing," creating a new government agency to oversee the implementation of a single law is moving in the wrong direction. Second, the range of programs, activities and facilities covered by ADA is so broad that it would be extremely difficult for one agency to provide the expertise and technical assistance required by the entities covered under the statute.
- Preliminary Draft's report should point out that as a nondiscrimination statute, ADA is not subject to scrutiny under the Unfunded Mandates Act.
- DOT believes that the elimination of the private right of action for the enforcement of Federal mandates would have adverse consequences for the enforcement of civil rights, environmental and other Federal statutes.

Clean Air Act

Preliminary Draft Recommendation: Permit state to develop their own approaches to air quality compliance, and eliminate financial penalties if states are making a good faith effort to comply.

DOT's Comments:

- Many of the mandates and timetables faced by the states were specifically required in the statute. Legislation would be required to implement this recommendation.

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- Much of the challenge and cost of compliance can be traced to the fact that air quality standards must be achieved under extreme event, worst case conditions. Greater flexibility in schedules for attainment would reduce the burdens on states.
- EPA and DOT have worked closely with states in revising the regulations regarding the "Conformity" of state transportation plans with air quality requirements to ease the burdens on states.
- The proposal to eliminate financial penalties based on such a low threshold or standard as "good faith efforts" could run the risk of significantly weakening enforcement of national air quality standards.

Crumb Rubber

Preliminary Draft Recommendation: Repeal requirement.

DOT's Comments:

- As the Preliminary Draft report indicates, the crumb rubber legislative requirement already has been eliminated by the National Highway System Designation Act of 1995.
- Several recycled materials have been used, or have potential for use, in highway construction. Each material should be evaluated on its own merits, through research, engineering assessments and cost evaluations.

I hope these comments are of assistance to you as ACIR prepares to finalize its report on Federal Mandates. Please feel free to contact me if you have any questions about the Department of Transportation's comments. I look forward to participating in ACIR Conference on Federal Mandates on March 7th.

Sincerely,

Frank E. Kruesi

Frank E. Kruesi
Assistant Secretary for Transportation Policy



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

March 1, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission
on Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, DC 20575

Dear Governor Winter:

I am writing to convey serious concerns that the preliminary ACIR report reflects clear misunderstandings about the Endangered Species Act (ESA) and fails to acknowledge substantial reforms put forward by the Clinton Administration in making the law work more flexibly for States, local government and private landowners.

Fundamentally, we question the characterization of the ESA as an unfunded mandate. The ESA mandates only that each Federal agency ensure that its Federal actions are not likely to jeopardize the continued existence of threatened or endangered species. The ESA's only other regulatory provision prohibits anyone from killing or injuring individual threatened or endangered animals without authorization. Neither of these provisions constitute unfunded mandates.

The ACIR preliminary report summary recommends that "exemptions to the ESA should be applied more extensively," among other suggestions. Regrettably, more extensive use of the ESA's exemption process necessarily means that more endangered wildlife will become extinct. More extensive use of the ESA's exemption process is not necessary to balance conservation and economic concerns. In fact, the record to date shows from 1987-1995, only 0.3% of development projects were stopped as a result of the ESA consultation process, so it is fair to conclude that economic development objectives have almost always been met within the context of the ESA.

Perhaps more disturbing, the report fails to acknowledge unprecedented reforms advanced by the Administration to minimize economic consequences and increase flexibility of the ESA. Our efforts include regional conservation solutions such as the Pacific Northwest Forest Plan, the California Bay-Delta Accord, regional conservation planning in southern California, southern Utah and throughout the Southeast -- all developed in close cooperation with State and local governments. Across the country, more than 200 Habitat Conservation Plans

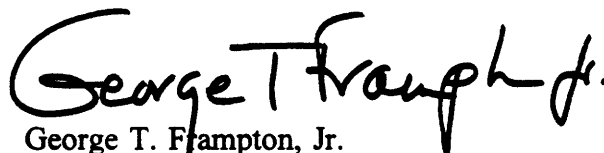
(HCPs) are under development with private landowners as a means of balancing conservation and development objectives. We have established "safe harbor" agreements that provide incentives to sustain wildlife habitat and provide regulatory certainty for private landowners. We have also built partnerships with States in endangered species candidate conservation and recovery programs, implemented uniform "peer review" procedures to ensure that every listing and recovery program is reviewed by independent scientific experts, and developed regulatory relief for small landowners.

There are a number of recommendations included in the ACIR report that reflect reforms we have already put in place. The ACIR report, for example, calls for additional funding and the Administration has consistently provided additional outlays in our budget proposals for State recovery and habitat conservation efforts including more than \$18 million for State habitat acquisition efforts in FY1996, which was eliminated by Congress.

Finally, there are several mischaracterizations of the regulatory provisions of the ESA within the ACIR report that include inaccurate representation of Section 9 prohibitions on "taking" of species. "Critical habitat" is also mischaracterized here as an automatic mandate rather than a standard in conservation of threatened or endangered species that may require special management considerations or protection by Federal agencies. Federal agencies do not have authority to target state parks for protection and recovery efforts. The only obligations that these non-Federal entities have under the ESA are those that every person and entity in this country has to not kill or injure individual threatened or endangered animal without proper authorization. They may, and sometimes do, voluntarily participate in Federal conservation objectives where the objective is to avoid regulation on private landowners.

In conclusion, we have demonstrated an unparalleled record in making the ESA work more flexibly for States, local government, and private landowners. We are interested in creating partnerships with ACIR to advance these efforts, however, it is important that we move forward with a common understanding of the ESA as well as with common objectives.

Sincerely,

A handwritten signature in black ink that reads "George T. Frampton, Jr." in a cursive, slightly slanted script.

George T. Frampton, Jr.
Assistant Secretary for
Fish and Wildlife and Parks



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 5 1996

THE ADMINISTRATOR

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, NW
Suite 450, South Building
Washington, DC 20575

Dear Governor Winter:

I am writing to provide you with my initial comments on the preliminary staff draft of the Advisory Commission on Intergovernmental Relations (ACIR) Report: The Role of Federal Mandates in Intergovernmental Relations. As you know, both the President and I are very strongly committed to building a strong working partnership with state, local, and tribal governments. Moreover, we have -- as many governors, mayors, and county officials will attest -- made tremendous progress in recent years implementing that commitment by providing greater flexibility to states and localities while continuing to achieve improved environmental results.

I am, however, deeply concerned that implementation of the recommendations in the preliminary draft report would dramatically compromise public health and environmental quality. I look forward to working with you and my fellow Commissioners to craft a more balanced report on the subject of the role of federal mandates in intergovernmental relations.

I have major concerns with regard to four specific recommendations of the draft report as they pertain to environmental quality. They are:

- the recommendation to withdraw citizens' rights in the enforcement of environmental laws;
- the call for significant relaxation of water pollution control by municipalities;
- the proposed long-term goal of eliminating Federal authority to set and enforce standards for safe drinking water, and
- the proposal to limit Federal authority to assure the effective control of harmful air pollutants.

Each of these concerns is described in greater detail in enclosed papers.

I also have concerns about other recommendations included in the draft report. The proposal that health and safety standards applied to state and local government be different than those applied to private industry and the federal government is particularly troubling, as is the proposal regarding the Endangered Species Act. Also the proposal that a single federal agency be designated to make binding decisions about each mandate warrants further consideration. The solution proposed may not fix the real problem.

Furthermore, I am concerned that the way the report currently describes all of the federal mandates is imbalanced. As you may recall, the Environmental Protection Agency (EPA) raised several specific concerns at the Commission's June 28th meeting about the need to address not only the problematic aspects of the mandates, but the beneficial aspects as well. At that time the Commission agreed to look at the "beneficial effects" of each mandate, although we agreed that ACIR would not try to "calculate benefits or weigh benefits against costs." Unfortunately, this staff draft directs little attention to the beneficial effects of federal mandates. As a consequence, the report implies that federal mandates are always bad public policy.

In the next draft, to assure a more balanced discussion, the report needs to include for each of the statutes examined a discussion of:


- why the federal mandate was enacted,
- benefits results resulting from the mandate, and
- where problems of rigidity existed in the implementation of the mandate, if and how changes have already been made to make the mandate more flexible and avoid the "one-size-fits-all" problem.
- Finally, if the ACIR report is going to assert the existence of a significant problem based on the comments it received during the preparation of the draft report, the assertion should be verified before inclusion in the report. Misinformation has seriously impaired the possibility of rational debate on unfunded mandates. For example, EPA is frequently criticized for requiring Midwestern states to monitor for pesticides currently used primarily on pineapples. The story is very misleading. The pesticide, which can cause male sterility, was used on a wide variety of crops in the Midwest and is still present in groundwater today.

The enclosed papers provide the Commission with some of the material it will need to prepare the next draft of the report. The papers discuss the beneficial effects of the three environmental laws examined and the reason enactment of a federal statute was deemed necessary. The enclosed papers also identify and correct several inaccurate or misleading assertions presented in the report. EPA will also be providing you a more detailed review of the specific language of the draft report and suggested changes.

ACIR has a long tradition of serving as an honest and open forum for identifying problems in the intergovernmental system, for formulating possible solutions to those problems, and for building intergovernmental consensus among its Commissioners in support of the proposed solutions. It has done that by focusing on facts -- by trying to separate the reality from the rhetoric. As an incumbent Commissioner, it is my hope that we can continue that tradition and deliver to the President, Congress, and the American people a far more balanced and informative report.

I look forward to working with you and the other Commissioners in this endeavor.

Sincerely,



Carol M. Browner

Enclosure

**Comments on
Preliminary Draft of ACIR Report on
The Role of Federal Mandates**

**EPA
CITIZEN RIGHTS TO ENFORCE ENVIRONMENTAL LAWS**

The authority of citizens to go to court to assure the enforcement of laws to protect their health and the environment is a cornerstone of our environmental laws. Citizen suit authority was part of the original 1971 Clean Air Act, the 1972 Clean Water Act and the 1976 Safe Drinking Water Act and the 1976 Resource Conservation and Recovery Act.

Citizen suit provisions are one of the few clear areas in federal, state, or local law that allow ordinary citizens to take action to protect themselves, their families, and communities from the dangers of pollution. For example, in one case, the court found that a city had repeatedly failed to act upon citizen concerns about a city landfill that was leaking hazardous chemicals to ground and surface waters stating that, "It was pressure generated by the plaintiff's efforts here that caused the city to actually close the landfill." The court went on to note that "only by bringing suit against the city were the plaintiffs finally able to get from the city action as opposed to mere promises."

In another case, a federal court allowed the citizens to pursue a citizen suit action against a city department of sanitation for discharges from a landfill, even though the state had initiated an enforcement action. The court specifically found that the state's enforcement against the city was not diligent, and the state "was acting as pen pal, not prosecutor." The court found it "incomprehensible" that discharges from the landfill were allowed to continue unabated for seven years despite an enforcement action by the state. The court held that citizens could sue in "precisely such an instance [as this] when the government has not been fulfilling its duties."

It was for precisely such instances as these that Congress empowered citizens to take action where the federal or state governments had failed, or refused, to do so. This is a critical check on not only state and local governments, but also on the federal government, in a balanced and democratic system of federalism.

**Comments on
Preliminary Draft of ACIR Report on
The Role of Federal Mandates**

**EPA
THE CLEAN WATER ACT**

When the Clean Water Act became law in 1972, the quality of America's rivers, lakes, and coastal waters was declining rapidly. Sewage commonly washed up on beaches. Fish kills were a common sight. Wetlands were disappearing at a rapid rate.

Today, the quality of our waters has improved dramatically as a result of a cooperative effort by Federal, State, and local governments to implement the water pollution control programs established in the Clean Water Act. Despite this progress, serious water pollution problems remain. Almost 40% of the waters assessed by the States have not attained desired water quality. Water pollution still causes beach closings, makes some fish unsafe to eat, and prevents attainment of the Clean Water Act goal of "fishable and swimmable" waters.

As described below, the preliminary draft of the ACIR report presents misleading and sometimes incorrect assertions about federal support for and implementation of the Clean Water Act. This, in turn, leads to erroneous conclusions and misdirected recommendations for addressing the problems that do exist.

The draft recommendations appear to be based on a misunderstanding of the history and operation of the clean water program and an ignorance of the dramatic, recent progress made in responding to municipal concerns relating to "Federal mandates." Drawing a clearer, fairer picture of the clean water programs requires an understanding of four key subjects --

- the history and operation of the sewage Federal treatment construction grant and State Revolving Fund (SRF) programs;
- the operation of the water quality standards program;
- the current status of programs to control pollution from municipal discharges from combined storm water and sanitary sewers and control of discharges from storm sewers; and
- the essential role of citizen suits in assuring effective implementation of clean water programs.

The proposed recommendations would not simply provide another way to meet the same water quality goals that reduces impacts on municipalities. If implemented the draft ACIR report recommendations would seriously undermine the Nation's entire clean water program and prevent attainment of clean water goals in many cases.

D) THE SEWAGE TREATMENT GRANT AND STATE REVOLVING FUND PROGRAM

A key conclusion of the brief description of the Clean Water Act in the draft ACIR report is that "federal funding to aid in the [water pollution] clean-up has virtually disappeared." This conclusion is the basis for the draft recommendation to "either {emphasis added} restore direct Federal sharing of costs or give State and local governments greater authority to develop their own control methods and timetables." This conclusion, however, is simply wrong.

A) Overall Funding Levels

The Federal contribution to municipal water pollution control projects has remained relatively stable since 1972. The attached table describes the Federal funding for municipal infrastructure under the Clean Water Act since 1973. Outlays have averaged between \$2-3 billion over the life of the program. This funding is a sustained, consistent, reliable Federal contribution to the water pollution control needs of municipalities.

The draft ACIR report suggests that it is important to "restore the successful partnership" for clean water by a return to substantial Federal sharing of costs.

In fact, the Federal government never abandoned this partnership. The Administration and Congress have maintained appropriations for municipal water pollution control at or above the \$2 billion level through FY 1995, even though the formal authorization for this funding declined sharply starting in 1992 and expired in 1994. The Administration is committed to maintaining appropriations at a level that will support financing of at least \$2 billion in eligible pollution control projects each year. This goal is a high priority for the Administration and is protected in the President's proposal for a balanced Federal budget in seven years.

B) Transition from Construction Grants to Capitalization Grants

The draft ACIR report correctly indicates that the 1987 amendments to the Clean Water Act provided for the phase-out of direct construction grants to municipalities. These funds were used instead to make grants to States to capitalize State revolving funds to make loans to municipalities. The draft ACIR report, however, incorrectly concludes that SRF loans require "local governments to pay virtually the entire costs of future pollution control."

Under the grant program, communities received a grant for 55% of a project cost and would seek bond or other financing for 45% of the project costs. Given repayment periods of twenty years or greater, bond financing costs were a significant part of overall project costs. While the amount of the principal of a loan is to be repaid, the loans are at very low interest rates and are for the entire project cost. As a result, the overall project cost is substantially reduced.

The attached table identifies the "equivalency" of a State low interest loan to a direct

grant. For example, a community receiving a zero interest loan from the SRF program gets an economic subsidy to overall project costs that is equivalent to a direct grant for 51% of the project costs, assuming that the community would have paid 8% interest on a bond. Although many State loan funds often charge more than zero interest on loans, a zero interest loan is perfectly legal under the Clean Water Act and the decision to charge interest is entirely up to each State. Even where higher interest rates are charged, the subsidy is a significant percent of project costs (e.g. 28% of cost at 4% interest rate).

Although most communities may be receiving loans with an overall value that is less than a 55% grant, local governments clearly are not assuming "virtually all" of project costs. In addition, the State loan fund approach has the advantage of endowing States with permanent, revolving funds to support water pollution projects far into the future. States continue to be partners in this joint financing approach by providing a 20% match to Federal grants.

The Congress adopted the State loan fund approach to financing of sewage treatment and related projects after extensive hearings on the relative merits of direct grants and state loans. It is important to note that the policy of shifting from direct Federal grants to State low interest loans has been widely endorsed by many national organizations, including organizations representing States and municipalities.

In hearing before the U.S. Senate Environment and Public Works Committee in 1989, a witness for the National League of Cities testified --

"Recognizing the deficit problems facing the federal government, and being willing partners in supporting your efforts to get your fiscal house in order, NLC supported moving to a revolving loan program as an alternative mechanism for providing financial assistance to municipalities...The system established in the act...seemed reasonable, in light of the Federal governments financial plight..."

At the same hearing, a witness for the State and Interstate Water Pollution Control Administrators testified --

"The States were among the primary advocates of the State Revolving Loan Fund (SRF) in the development of the 1987 Water Quality Act. We strongly support the concept and believe that adequately capitalized revolving funds will be the most viable mechanism for funding not only municipal wastewater treatment but also other water pollution control activities such as nonpoint sources."

In addition, a number of States have been able to "leverage" Federal capitalization grant funds to substantially expand the resources available to communities. These leveraged funds allow greater numbers of communities to receive financing assistance and assure that needed projects receive assistance as quickly as possible.

It is important to note that the ACIR draft report recommends enactment of amendments

to the drinking water law similar to those passed by the Senate for water pollution and specifically notes that the Senate amendments provide "funding for State capitalization loan funds to reduce interest costs of compliance." It is not clear why the ACIR report finds a loan fund to be appropriate for financing municipal infrastructure projects for drinking water but inappropriate for financing municipal infrastructure projects for water pollution control.

Finally, the Administration has proposed amendments to the Clean Water Act to address operational issues relating to the clean water loan fund program. For example, the Administration supports amendments to help small and disadvantaged communities make better use of loans, including both extending the 20 year repayment period and providing for limited forgiveness of loan principal where needed to avoid excessively high user charges. These and related amendments to the State loan fund program would substantially address the concerns for the difficulties faced by small communities raised under the "Common Issues" heading on page 5 of the draft ACIR report. These concepts were included in the State loan fund provisions of the Senate passed drinking water bill.

II) CLEAN WATER ACT GOALS AND WATER QUALITY STANDARDS

The draft ACIR report states that "If there is not sufficient national priority to justify federal spending, then State and local governments should be able to use the least costly alternatives and to work within their fiscal constraints." The long-term, sustained Federal commitment to financing for municipal water pollution control projects is evidence that water pollution control is a national priority and that municipal control responsibilities should not be changed.

Even in the event that Federal spending were to be reduced, there is a strong case that the existing requirements for municipal water pollution control should remain in place. The adoption of the draft ACIR report approach of allowing "least costly alternatives" and water pollution control "within fiscal constraints" might be interpreted as calling for a dramatic rollback in municipal water pollution control responsibilities that have been in place since the enactment of the 1972 Clean Water Act.

A) Minimum Pollution Control Effort

The dramatic improvements in sewage treatment over the past twenty years are a national success story. Local, State and Federal governments have invested over \$80 billion in sewage treatment facilities under the Clean Water Act. These facilities now remove millions of tons of pollutants from municipal wastewaters annually and have made routine discharge of raw sewage increasingly rare.

Much of this progress was accomplished by the implementation of a single, national, minimum standard for sewage treatment (termed "secondary treatment"). The Clean Water Act requirement that almost every community provide secondary treatment of sewage, or its

equivalent, is, more than any other single factor, responsible for the elimination of the most extreme degradation of rivers, lakes, and coastal waters around the Nation.

In addition, the Clean Water Act provides for the development of national, minimum standards for industrial discharges going directly to water bodies (termed effluent guidelines) and for industries that discharge to a sewer system (termed categorical pretreatment standards). The implementation of these national industrial standards results in the removal of over one billion pounds of toxic pollutants annually. Of this total, over 500 million pounds of toxic pollutants are removed from discharges to sewer systems.

It is important to note that secondary treatment and industrial effluent guidelines specify performance standards for dischargers but do not specify the treatment technology or process to be implemented. Municipalities are free to meet secondary treatment standards in the "least cost" way.

1) Reasons for National Minimum Standards

During the debate on the 1972 Clean Water Act, and subsequent reauthorizations of the Act, some have argued that industrial facilities and sewage treatment plants should not have to meet national, minimum standards because they do not assure water pollution control at the "least cost." The argument is that a national standard is a "one size fits all" policy and that this will require some facilities to implement greater pollution controls than might be minimally necessary to attain water quality goals at that location.

Supporters of the original Clean Water Act made several arguments for national, minimum standards. Each of these arguments is still relevant today.

- National, minimum guidelines reduce the chance that downstream communities are saddled with pollution from upstream communities, perhaps in another State, that have not cleaned up their own pollution.

Without national, minimum guidelines, dischargers in one State might argue for reduced pollution controls without considering that most of the water quality impacts occur in another State downstream.

- National, minimum guidelines establish a level playing field and protect cities and States from having to choose between protecting water quality or reducing water quality protection to attract industry. For example, a sewage treatment plant in one community is not forced to enter into a bidding war with another community willing to allow an industry to discharge more pollution to its sewer system.
- National, minimum guidelines are very effective in reducing pollution. They are predictable with respect to the design of treatment systems and efficient to administer in that they do not require extensive debates over complex scientific

issues at each facility.

Without national, minimum guidelines, the administrative complexity and cost of developing pollution controls would increase; government and dischargers would invest large sums in competing research and monitoring to determine needed controls; the predictability of treatment would be reduced; and the costs and time needed to design and build treatment systems would increase.

The suggestion in the draft ACIR report that communities be allowed to adopt the "least cost" approach to pollution control will be interpreted as support for removal of national, minimum treatment standards (e.g. secondary treatment of sewage) for municipal sources. By suggesting that municipalities need not meet national, minimum standards in the form of secondary treatment, the ACIR is also indirectly suggesting that industrial sources need not meet such standards. It is important to note that in the debate on the 1972 Clean Water Act, and in the debate on every reauthorization of the Act for the past 22 years, the Congress has judged that the significant benefits provided by secondary treatment and effluent guidelines outweigh the value of a "least cost" approach. As noted above, secondary treatment regulations do not require specific technology and communities are free to attain the national standards using the least cost methods available.

2) Lack of a "Safety Net" in National Standards Repealed

Finally, the Clean Water Act provides that national, minimum guidelines operate in conjunction with State established water quality standards to protect receiving waters. By suggesting that national, minimum standards should be waived in favor of a "least cost" approach, the draft ACIR report suggests that compliance with the water quality standards currently in place would be fully sufficient to provide a "safety net" to protect receiving waters if national, minimum standards were repealed.

The lack of scientific information needed to make a precise link between pollution and water quality is commonly cited as a reason for requiring dischargers to meet national minimum standards. Senator Edmund Muskie cited this problem in Senate debate on the Senate clean water bill --

"The legislation recommended by the committee proposes a major change in enforcement mechanism -- from water quality standards to effluent limits...

Under the 1965 Act, water quality standards were set as the control mechanism. States were to decide the uses of water to be protected, the amounts of pollutants to be permitted, the degree of pollution abatement to be required, the time to be allowed a polluter for abatement.

The water quality standards program is of limited success. After 5 years, many States do

not have approved standards. Officials are still working to establish relationships between pollutants and water uses. Time schedules for abatement are slipping away because of the failure to enforce, lack of effluent controls, and disputes over Federal-State standards. The Committee recommends the change to effluent limits as the best available mechanism to control water pollution." (page 1254; Legislative History of the Federal Water Pollution of 1972, Vol. 2).

Although considerable progress has been made in development of water quality standards, significant gaps exist in these standards. Water quality standards, operating alone or in conjunction with badly weakened national, minimum standards, would not provide adequate protection for the Nation's waters.

EPA has published the scientific information that the States need to develop pollutant-specific, numeric standards to protect aquatic life for 30 pollutants; information on human health effects has been published for 91 pollutants. While States have adopted numeric water quality standards for most of the pollutants for which information has been published, many States do not have numeric standards for the hundreds of other toxic pollutants discharged to their waters.

National minimum guidelines for direct dischargers and for industries discharging to sewer systems (effluent guidelines and categorical pretreatment standards), however, are able to control several hundred toxic pollutants, including many for which no pollutant-specific numeric standards are in place. Most States have a general, statutory prohibition against the discharge of toxic pollutants "in toxic amounts" and this general authority could help prevent environmental harm in the absence of a pollutant specific, numeric standard. Unfortunately, this general authority is not a reliable substitute for pollutant-specific water quality standards. Only about half the States currently have formal procedures for implementing this general prohibition.

EPA is working to improve the water quality standards program. The agency is developing a comprehensive plan for the development of scientific information on specific water pollutants and is working with States to improve procedures for translation of narrative prohibitions on toxic discharges into pollutant-specific numeric standards.

B) The Cost of Meeting Water Quality Goals

The proposal in the draft ACIR report to allow communities to "work within fiscal constraints" in implementing pollution controls might be interpreted as allowing municipalities to avoid meeting water quality goals where they decide that the costs are too high.

The 1972 Clean Water Act established long-term goals for the Nation's water clean-up programs including bringing all waters to "fishable and swimmable" quality. As part of this effort, States designate specific "uses" for waters and adopt water quality criteria as needed to attain and maintain uses. These uses and criteria are reviewed every three years and revised where further progress toward the goals of the Act is attainable.

The Clean Water Act provides that, where a water body does not meet its designated use or goal, additional water pollution control measures are to be implemented by all the sources of pollution to the water body as needed to attain the standard and in relative proportion to their contribution to the problem. If any specific source of water pollution, such as a municipality, were to decide that budget constraints prevented it from doing its part to meet the water quality goal, the goal might well not be attained. This scenario could also put in question all the efforts by other sources to implement their share of needed pollution controls and could well cause a total breakdown in pollution control.

In effect, the draft ACIR report proposes to allow municipalities to unilaterally lower or downgrade a designated use of a water body based on a simple declaration that costs to solve their share of the pollution problem are too high. It would even be possible for a municipality to cause clean waters to slide back toward pollution by declaring that pollution controls needed as a result of growth are "not within fiscal constraints."

The current law provides a process for States, rather than individual municipalities, to lower water quality goals in very narrow circumstances. Once a water body meets its designated use, the use may not be lowered to be less protective. In the case of an impaired water body (i.e. a water body not attaining the use), a State may downgrade the designated use where existing physical or biological conditions prevent attainment or where necessary to avoid "substantial and widespread economic and social impact." State procedures for lowering the designated use require public notice and public involvement. EPA reviews and approves downgrading actions.

At the same time, EPA recognizes that the cost-effectiveness of water pollution controls can be improved. The Administration is working aggressively to encourage States to implement pollution control programs on a watershed basis. By developing water pollution controls on a watershed basis, pollution control responsibilities are shared most efficiently among all sources of pollution. In addition, the Administration recently published a policy to support effluent trading among point and nonpoint sources of pollution. This new trading policy will help create more opportunities to allocate pollution control responsibilities in a cost-effective manner.

III) COMBINED SEWER OVERFLOW AND STORM WATER CONTROL

The Administration has taken a firm position against retreat from the national, minimum standards of the Clean Water Act or weakening of procedures for lowering water quality goals. At the same time, the Administration recognizes the severe financial constraints that many municipalities face in implementing needed water pollution controls. The Administration is working to develop innovative and flexible approaches to control of municipal pollution that also assure that water quality goals and standards are attained.

The draft ACIR report suggests that municipalities are especially concerned with the cost of controlling discharges of raw sewage from combined storm and sanitary sewers and discharges from storm sewers. The Administration is working to assure that needed controls over these

pollution sources can be implemented in a responsible and realistic manner and consistent with the current Clean Water Act.

A) Combined Sewer Overflow Policy

EPA recently published a national policy for the control of overflows from combined storm and sanitary sewers (CSOs). The policy is the product of a consensus process involving representatives of municipalities, State agencies, and environmental groups. Each of these groups supports the policy as a reasonable and responsible approach to control of a significant and serious source of water pollution.

The CSO Policy includes two key components – implementation of nine minimum controls specifically identified in the policy by January 1, 1997 and the development and eventual implementation of a long-term control plan to identify any additional pollution controls that will ultimately be needed to protect water quality. In some CSO permits, it will be appropriate for any measures beyond the minimum controls to be implemented within the five year term of the permit or the otherwise applicable compliance period under State law (e.g. compliance within three years).

The CSO policy recognizes that, in some cases, reasonable and affordable implementation of the long-term control plans will require longer than the otherwise applicable compliance period. The policy indicates that compliance with water quality standards should occur as soon as possible, but may take up to 15 years, and in extraordinary cases, more than 15 years. In establishing compliance schedules, the permit issuing authority can consider both the practicality and the cost of needed control measures. In these cases, a permit will be issued in conjunction with an administrative or judicial order. The permit is to require compliance with water quality standards within the applicable compliance period, but the order establishes a longer compliance period consistent with the long-term compliance plan.

Implementation of the policy is well underway and many communities are making good progress in implementing the minimum controls and developing long-term compliance plans.

The CSO policy is an excellent example of the effective use of the flexibility now in the current Clean Water Act to address the concerns of municipalities about pollution control costs and timing while still preserving the core commitment to meeting water quality goals.

B) Discharges from Storm Sewers

Municipalities have expressed strong concerns about the costs of controlling discharges from storm sewers. The Administration recognizes that control of storm water discharges poses difficult challenges and has taken clear, specific steps to assure that municipalities can implement reasonable and effective storm water programs.

The 1987 Clean Water Act amendments created a moratorium of the otherwise applicable

requirement to have a permit for discharges composed entirely of storm water, with certain exceptions, until 1994. Storm water discharges excepted from the moratorium have been referred to as "Phase I" and generally include industrial storm water discharges and storm water discharges from municipalities of over 100,000 population. The remaining moratorium sources were termed "Phase II" and generally include municipalities under 100,000 population and most commercial and industrial enterprises.

1) Small Communities

Under the 1987 Clean Water Act amendments, the EPA was to publish the Phase II (i.e. small community) regulations by October 1, 1993 and the Phase II program was to begin by October 1, 1994. By the lapse of the moratorium, on October 1, 1994, EPA had not published the Phase II regulations. EPA is, however, subject to a consent decree to propose Phase II regulations in September 1997 and to promulgate final rules in March 1999. This decree provides the framework for the Agency development of the storm water program consistent with the current law and effectively assures that many small communities will not need to address storm water until at least 2001.

The consent decree could not, however, provide any shield from liability for discharges from Phase II sources after October 1, 1994. Although EPA did not expect to take enforcement actions against Phase II municipalities, these municipalities were potentially subject to citizen suits for discharging without a permit. To address this concern, the Agency published a regulation in August of 1995 to provide for the orderly development of a consensus-based Phase II program and to assure that municipalities under 100,000 population would not be liable for permits for storm water discharges during the program development period.

After the promulgation of the August 7 final rule, the Agency began the process of developing a revised Phase II rule in compliance with the consent decree. The Agency fully anticipates that the upcoming rulemaking will narrow the Phase II program and that the program will apply to fewer sources, perhaps significantly fewer sources, than those addressed under the August 7, 1995 regulation.

2) Large Municipalities

About half of the large municipalities in the country now have permits for control of storm water discharges and all large communities will have permits in place in the near future. Many communities were concerned that these permits would include pollutant specific, numeric effluent limitations. Municipalities argued that complying with these pollutant specific, numeric limitations would be impractical and costly.

In issuing these permits, EPA and the states are using the flexibility in the current Clean Water Act to provide permits that express effluent limitations in narrative form, including the identification of best management practices that are expected to result in the attainment of water quality standards. EPA's position is that the statutory definition of "effluent limitation" provides

the permitting authority with the flexibility to express effluent limitations in ways other than

pollutant-specific, numeric effluent limitations. The use of best management practices to prevent, reduce or eliminate pollutants in storm water satisfies the statutory definition of an effluent limitation. The use of this discretion is appropriate in the case of storm water discharges because of the intermittent nature of municipal storm water discharges and limited information to support derivation of numeric effluent limitations in most cases.

3) Compliance with Water Quality Standards

The permits issued to large municipalities include provisions requiring monitoring to determine the effectiveness of best management practices and progress toward attainment of water quality standards. EPA is aware that, despite the effort to assure that best management practices result in attainment of water quality standards, future monitoring reports may indicate failure to attain standards in some cases. In these cases, EPA will review the permit limitations and the implementation of the best management practices and require additional controls as needed to meet applicable water quality standards. If a municipality believes that these costs are not affordable, it may request that the State lower a use that is not being attained.

4) Storm Water Federal Advisory Committee

EPA is working to develop policy options to address the possibility that any additional storm water pollution controls that may be needed to assure attainment of water quality standards may be beyond the budgetary constraints of communities.

A key part of this process is the work of an advisory committee EPA has convened under the Federal Advisory Committee Act to provide recommendations on the wide range of storm water issues. Membership on the advisory committee includes a variety of industrial and municipal stakeholders, as well as citizen groups.

EPA is working with this advisory group to develop a broad consensus on the range of storm water policy issues similar to that developed in the CSO policy. This proven approach to development of a consensus policy focused on the specific problem is preferable to the radical rollback of pollution controls suggested in the draft ACIR report.

ATTACHMENTS

- Chart -- Federal Funds for Sewage Treatment
- Grant Loan Chart

**CLEAN WATER INFRASTRUCTURE FUNDS
(\$ IN MILLIONS)**

Fiscal Year	Authoriz.	Approp.	Obligations	Outlays
1973	5,000	2,000	2,927	684
1974	6,000	3,000	2,791	1,553
1975	7,000	4,000	4,227	1,938
1976 ¹	0	9,000	5,017	3,348
1977 ²	1,480	1,480	7,501	3,530
1978	4,500	4,500	2,860	3,187
1979	5,000	4,200	4,257	3,756
1980	5,000	2,520 ³	4,673	4,343
1981	5,000	2,644 ⁴	3,942	3,884
1982	2,400	2,400	2,117	3,756
1983	2,400	2,400	3,737	2,983
1984	2,400	2,400	3,717	2,983
1985	2,400	2,400	2,574	2,900
1986	2,400	1,800	2,110	3,113
1987	2,400	2,361	2,159	2,920
1988	2,400	2,304	2,793	2,514
1989	2,400	1,950 ⁶	2,531	2,350
1990	2,400	1,980 ⁶	2,440	2,290
1991	2,400	2,100 ⁷	2,528	2,389
1992	1,800	2,400 ⁸	2,311	2,421
1993	1,200	2,550 ⁹	2,601	2,130
1994	600	2,477 ¹⁰	1,714	1,978
1995		2,962 ¹¹	2,962 est.	2,202 est.
1996		2,323 ¹²	1,865 est.	2,147 est.

Source: *Budget of the United States Government, Appendix, various years.*

GRANT EQUIVALENCY OF SRF LOANS
AT CERTAIN INTEREST RATES

SRF INTEREST RATE	CONSTRUCTION GRANT EQUIVALENT
0%	51%
1%	46%
2%	40%
3%	34%
4%	28%
5%	21%
6%	14%
7%	7%
8%	0%

ASSUMPTIONS

- Project would have been 100% grant/loan eligible
- Loan is for 100% of project costs
- Loan maturity is for 20 years with level debt service
- Bond market interest rate is 8%

- ¹ Includes Transition Quarter (July - September 1976).
- ² Includes \$480 million under Public Works Employment Act (P.L. 95-369).
- ³ \$3,400 million was originally appropriated; in P.L. 97-12 Congress rescinded \$880 million of that amount.
- ⁴ \$3,400 million was originally appropriated; in P.L. 97-12 Congress rescinded \$756 million of that amount.
- ⁵ \$88 million of this amount is earmarked for 4 specific projects, leaving a total of \$1,882 million for grants.
- ⁶ \$45 million of this amount is earmarked for 3 specific projects, leaving a total of \$1,935 million for grants.
- ⁷ \$52.2 million of this amount is earmarked for specific grants and special projects, leaving \$2,047.8 million for capitalization grants under the State Revolving Fund program.
- ⁸ \$45.5 million is earmarked for specific grants and special projects, leaving \$1,948.5 million for grants under the State Revolving Fund program.
- ⁹ \$824.5 million is earmarked for specific grants and special projects, leaving \$1,925 million for grants under the State Revolving Fund program.
- ¹⁰ Of the total, \$769 million is earmarked for special projects/grants and for a new drinking water SRF, pending authorization. \$500 million of the total is reserved for projects in economically distressed/hardship communities and is not available for spending until Sept. 30, 1994 (and was fully allocated by conferees in the FY95 appropriation bill), leaving \$1,218 million immediately available for clean water SRFs.
- ¹¹ Of the total, \$945 million is earmarked for special projects/grants, including \$700 million for a new drinking water SRF, pending authorization. \$782 million of the total is reserved for 45 specific, named projects (identified as "needy cities"), leaving \$1,285 million for clean water SRFs.
- ¹² Amount provided in conference report on H.R. 2099 (H.Rept. 104-252). Total includes \$658 million for new consolidated Infrastructure Assistance Account, \$275 million for drinking water SRF grants, \$265 million for earmarked projects and U.S.-Mexico grants, leaving \$1,125 million for clean water SRF grants.

**Comments on
Preliminary Draft of ACIR Report on
The Role of Federal Mandates**

**EPA
THE SAFE DRINKING WATER ACT**

The preliminary draft of the ACIR report contains a fundamental misconception of the origins of and the need for the 1974 Safe Drinking Water Act (SDWA). This misconception lays the foundation for a distorted view of its problems and appropriate policy remedies today.

The only factors that the draft report cites as "a basis for Congress to enact the 1974 law" (A-28) were technical concerns about the accuracy and scope of the Public Health Service's (PHS) existing, voluntary drinking water standards. The section erroneously suggests a picture of a law enacted only to correct scientific problems with standards that have been misapplied to impose irrational and wasteful requirements on water systems that largely had been providing safe water all along.

EPA's own principles for reauthorization of SDWA clearly recognize and advocate correction of the shortcomings and inflexibilities in the current law. But the history and reality of this issue is not nearly as simple as the report suggests. The report omits any reference to Congress' much more immediate and equally fundamental concern in writing the 1974 SDWA, made clear in the congressional Committee reports — that far too few systems were meeting or making any effort to discover if they were meeting those existing standards.

A key PHS study, widely cited in the Committee reports, found that only 10-15% of water systems conducted adequate testing for basic microbiological safety; that one-third of systems that tested found contamination exceeding the PHS limits; and that 56% of systems had physical deficiencies that could seriously affect safety. Small systems' lack of economies of scale was repeatedly noted as a major source of water safety vulnerability.

Contrary to the "no problems" conclusion suggested by the report's assertion that "prior to the imposition of federally mandated requirements, most states were already imposing PHS standards on local water systems" (A-29), the PHS study and Congress itself found that the lack of national requirements meant that a disturbingly large percentage of systems was providing demonstrably unsafe water, and the vast majority of systems provided water of essentially unknown quality. Thus, the status quo was entirely inadequate to assure safe drinking water to the American people.

Major Problems with the Draft Report

Just as there are fundamental flaws in the draft report's history on which its assumptions of the proper role of SDWA is based, much of the report's critique and proposals for change rest on a misunderstanding of (1) how the drinking water program currently operates, and (2) the importance of having drinking water program actions at all levels (federal, state and local) founded on a sound scientific base to assure effective protection of public health.

The report focuses on two aspects of the national drinking water program --

- standards for contaminants, consisting of Maximum Contaminant Levels (MCL) and treatment techniques; and
- requirements for water systems to monitor for contaminants.

A) Standards for Contaminants --

1) Maximum Contaminant Levels

Maximum Contaminant Levels (MCL) are the specific numerical standards which define when the concentration of a contaminant in drinking water is or is not "safe." Contrary to the assumption in the draft report (A-30), so far as EPA is involved, compliance with these MCLs is *already* "based on performance not process." Systems whose finished water (that is, water within their distribution lines) violates an MCL need simply use whatever technology or other means their state will accept to bring their finished water quality into compliance with the MCL (the standard). Neither SDWA nor EPA's regulations require a system to use any specified technology to meet a MCL.

There have been two problems with MCL compliance in practice. One is that, for some contaminants, there is no technology or other means that many smaller water systems can afford that will treat their water to comply with the MCL. This problem is well-known, well understood, and appropriately addressed by providing new affordability variances. Such variances are provided for in all three SDWA bills passed by either house of Congress to date.

The second problem is much less known. EPA must (under SDWA) set the MCL by reference to affordable, available technology that comes as close as feasible to the level at which there is "no adverse health effect." While the MCL that results is a numerical performance standard, many states have been unwilling to allow systems to use a different (or packaged rather than custom-engineered) technology than the technology that is the reference point for the MCL. This does not arise because "states lack flexibility and discretion in implementing the law" (A-29) -- this is neither a SDWA nor an EPA regulatory requirement -- but is a product of a conservative engineering approach to water treatment (e.g., the restrictive "10 state standard"). This well illustrates a situation where the draft report's recommendation of "returning to the states full responsibility for safe drinking water standards" (p. 13) could make the current problems of small water systems worse.

The remedy is the provision, also in all relevant SDWA bills, requiring EPA to specify a range of technologies and including the presumption for states that a system's use of such technologies will allow it to meet the MCL. Thus, the solution to any problems with the MCL compliance regime are simple, well-known and generally accepted. The proposal set forth in the draft ACIR report is the wrong solution to the problem.

2) Treatment Techniques – The positions on this issue stated in the draft report clearly are based on some of the more vehement concerns voiced to ACIR about SDWA "problems [from] ... requirements ... to treat surface water in instances where the risks are relatively low and the costs are significant" (A-29), "treatment requirements that do not relate directly to specific existing and measurable contamination" (A-29), and about "water systems [that] do object to incurring costs that in their opinion do not improve water quality" (A-30).

However troubling these concerns may seem, the report's apparent embrace of them in the context of surface water treatment puts ACIR in a position that is inconsistent with sound science and well-established knowledge and practice in public health and sanitary engineering.

The SDWA allows EPA to prescribe a mandatory treatment technique – such as filtration or disinfection of surface water (rather than a numerical MCL that serves as a performance standard) – where it would be "technically or economically infeasible to measure the level of a contaminant." This is indisputably the case with microbial contaminants (such as giardia or cryptosporidium), which can be dangerous in any concentration and which (unlike most chemical or radiological contaminants) do not tend to dilute relatively evenly in surface water supplies.

A system might sample uneconomically large quantities of water, find no waterborne diseases, and still not be able scientifically to be confident that diseases which would pose a serious threat to public health were not present. Thus, there is a requirement for disinfection of all surface water supplies, and, under the Surface Water Treatment Rule (SWTR), filtration for all surface waters whose sources are not clean and demonstrably free of the indirect indicators of microbial contamination, and of conditions that would tend to produce such contamination. Thus, because of the nature and unpredictable occurrence of microbial contamination, *the fact that samples may be free of direct contamination does not mean, scientifically, that the water is reasonably safe from that contamination where other, related conditions that show safety are not also present.*

This framework does not represent an excess of caution by EPA and the state drinking water programs that implement and almost uniformly support the SWTR. In fact, 30 states required filtration for all surface water systems even before the SWTR was promulgated. The American Water Works Association, the water industry's professional organization, has for three decades had a policy that water systems should filter all surface water supplies -- without any exception, even when source waters are strongly protected. The states and EPA have granted such exceptions to over 140 systems nationally.

The late Abel Wolman, a pioneering sanitary engineer and for over six decades the dean of American water supply professionals, long urged surface water systems to use multiple barriers, in which they both protected source waters and filtered. Thus, EPA's allowance of filtration avoidance for source water protection is more lenient than the widely prevailing view among sanitary engineers.

Some small water systems that lack economies of scale may well have difficulty affording filtration of surface water supplies. (It should be noted, however, that some of the claims of high treatment costs often inappropriately include high and unrelated costs of replacing worn out supply infrastructure.) Because surface water filtration is such a basic, essential health protection measure, EPA has advocated, and all three SDWA bills that passed the House or Senate have included, authorization of a State Revolving Loan Fund to help underwrite the cost of filtration, and provisions to authorize less costly, package filtration plants for small systems that states will accept in all cases, without custom engineering. The challenge is to find creative ways to afford the necessary level of protection consistent with the SWTR, not to provide less protection in this vital area.

The most basic public health provision a water system can give its customers is to protect drinking water against microbial contamination. Customers throughout the developed world properly assume such protection is the least they can expect to receive.

B) Water System Monitoring Requirements -

The draft report's concerns in the monitoring area are similar to those pertaining to treatment techniques; that some "tests that have nominal costs per customer for large systems are extremely costly per customer for small systems" (A-29), and again, that testing is another substantial cost that some water systems argue does "not improve water quality" (A-30). These are familiar concerns, and not without merit. But by accepting them in such an unqualified manner, ACIR oversimplifies the issue and the possible solution, and disregards the potential increased risk to public health.

First, only in the narrowest and most literal sense can testing costs for water safety be considered costs that "do not improve water quality." Of course, tests of water quality do not literally "improve water quality" but simply tell what that quality is. But if systems do not adequately test the quality of their water, on what scientific basis can customers, state regulators, or the systems themselves be sufficiently confident that that water quality is safe? Clearly, the burgeoning sales of bottled water, which a survey by the water utility industry itself (AWWA) identified as being at least half motivated by concerns for drinking water safety, make complacency about consumer confidence and testing misplaced and unresponsive. The more appropriate issue for discussion in response to concerns about testing costs is, "what constitutes adequate testing?"

EPA has added testing-waiver programs that states can adopt and which can cut testing costs by more than two-thirds. These waivers are given in situations where an anthropogenic (man-made) contaminant was never used in an area, or where hydrogeologic data shows that a system's water source is not vulnerable to contamination. Nearly all states have EPA-approved programs in place, and EPA has frequently given expedited, interim approval to allow many of these states to give systems waivers prior to full approval, specifically to address the cost concern.

However, EPA recognizes that even these waiver programs have their limitations (they are more resource-intensive to start than some states can afford without more federal aid), and state implementation once approved by EPA has been slow and uneven. Thus, EPA is, as a part of its drinking water program redirection effort (a far-reaching regulatory reinvention initiative that has been under way for more than a year, and whose existence the draft report does not acknowledge), moving to reduce testing requirements for chemical contaminants (the source of greatest small system cost) to focus on those systems at risk of contamination, and on sampling to be done at the time of the water system's maximum vulnerability.

This approach can be flexible, cost-effective, responsible public health policy if tests are timed and located by good information to be properly indicative, as opposed to testing that can be gamed to avoid finding problems. Responsible public policy requires this sort of distinction and the good information on which to make it, but both distinctions are missed by the draft report.

**Comments on
Preliminary Draft of ACIR Report on
The Role of Federal Mandates**

**EPA
THE CLEAN AIR ACT**

The framework for the nation's clean air effort was developed under the 1970 and 1977 versions of the Act. Although great progress toward cleaner air had been made under this framework, the 1990 Amendments were enacted because twenty years of efforts and commitments had not brought America clean air. In 1990, almost 140 million people still lived in communities that violated the health standard for smog. More than 40 million people still lived in communities that violated the health standard for carbon monoxide. The Toxic Release Inventory, covering only a portion of industry, reported nearly three billion pounds of toxic emissions being released into the air. More than 22 million tons of sulfur dioxide releases each year were continuing to add to the destruction of forests, and the acidification of lakes and streams.

The overview fails to recognize that the 1990 Amendments were enacted in response to broad public concern that America had not yet achieved the benefits of clean air. The write-up in the preliminary staff draft of the ACIR Report on the Clean Air Act is correct in stating that the Act's requirements have become increasingly detailed and specific over time. However, the draft fails to note that the Congress was clear that its reason for adding the specific requirements was years of frustration with the lack of progress in cleaning up the air on the part of both the federal Environmental Protection Agency and the state and local governments. As a result, over time Congress added extensive specific requirements for EPA to establish new programs, like acid rain protection and the operating permits program, and to issue new regulations for a wide variety of industries (e.g. automobiles, steel, chemicals, oil, utilities).

The 1990 Amendments included new provisions requiring state and local governments to reduce the pollution that causes ground-level ozone (or smog) by 15 percent over six years and then 3 percent per year thereafter. By and large it gives state and local governments flexibility to determine how best to achieve those reduction goals. The 1990 Amendments do include some specific requirements for states and local governments, such as vehicle inspection and maintenance programs, to help improve air pollution. These requirements generally vary according to the severity of the air pollution problem in question. It is important to note that in exchange for the more specific requirements, the Congress provided states and local areas with longer deadlines to meet the standards -- as long as 15 to 20 years for those areas with the worst problems. Moreover, Congress recognized that minimum requirements would help mitigate pollution transport between states.

The ACIR preliminary staff draft report provides misleading characterizations to specific provisions of the 1990 Amendments. Furthermore, by failing to describe the benefits of the Act the draft report implies that the mandates have had only negative consequences, disregarding the beneficial impacts.

The draft report states that all carbon monoxide areas classified as "moderate" have to implement oxygenated fuel programs. That is essentially true, although it is important to note that of the 42 areas of the country that did not meet the carbon monoxide standard in 1990, all but seven meet that standard today. Many of those areas now meeting the standard have "opted out" of the oxygenated fuels program. In other words, the mandates have achieved significant health benefits for dozens of communities and millions of people throughout the country.

The ACIR preliminary report states that failure to implement programs like stage II vapor recovery and oxygenated fuels can result in the loss of highway funds. While the potential loss of funds is possible, the preliminary report fails to note that to date no highway funds have been lost while significant air quality benefits have been gained.

Under the requirements of the Act and EPA's sanctions rules, states have a great deal of time and flexibility before any highway funds would be affected. For example, assume a situation where a state was required to submit a plan to EPA stating how it planned to implement a certain program by the given date in the law (assume it to be November 1993 for purposes of this example). Generally EPA will notify the Governor of the state of its failure within 60 days, so in this example EPA would do this in January 1994. That starts an 18-month sanctions "clock" and no sanction would go into place during that period. Under this example, no sanction would go into place until July 1995. Under EPA's rules, the EPA would implement a 2:1 emissions offset sanction at that time. The highway sanction would not be generally implemented for another six months, or until January 1996. So a state can miss a deadline by over two years and still avoid any highway sanctions going into place. Of the over 2,000 state plan revisions required since 1990, highway sanctions have gone into place in only two instances, and to date no highway projects have been affected. This is a testament both to the positive working relationship between EPA and the states, and to the strength of the CAA as an incentive to encourage innovation to improve air quality at the lowest possible cost.

The ACIR write-up also states that "the federal government will prepare a plan for any state that fails to comply." This statement implies that these federal implementation plans are commonplace. While it is true that the Act provides such authority to EPA, federal implementation plans have only been implemented in extremely rare instances. EPA believes it is in all parties' best interest for the Agency to help the state and local governments solve the air pollution problem and use federal plans only as a very last resort. Again, however, the possibility of a federal implementation plan has proven an effective incentive for states to develop their own place - appropriate strategy to improve air quality.

According to the ACIR write-up, states have been given "...less and less dis-
how to implement [the law] and ...less federal financial assistance for their admini-
The opposite is true. Over the last several years, EPA has mounted a major and the States maximum flexibility in how they achieve the Act's goals. The assistance to the states to implement the Clean Air Act has grown steadily over time. From \$181 million in 1975 to \$96.2 million in 1988 to \$181 million in 1995.

The preliminary report states that ozone nonattainment areas classified as "moderate" are required to implement programs requiring gasoline pump devices to capture vapors (known as "stage II). Under current EPA regulations only those areas classified as "serious" or above must implement such programs. The exception to this is in the northeastern states of the Ozone Transport Region, and even there EPA has provided flexibility for states that have comparable ways of achieving the needed reductions in air pollution without stage II programs.

In its January 1996 Preliminary Report on Federal Mandates, the ACIR recommended that EPA "Permit states to develop their own ways of meeting federal air quality standards, and eliminate financial aid penalties if states are making good faith efforts to comply." This recommendation fails to recognize the success in developing flexible and less burdensome means to ensure clean air.

1) The first part of the recommendation requests that states should be given the flexibility to develop their own ways of meeting the Clean Air Act goals. EPA is in fact working closely with the states to provide additional flexibility and assistance in meeting the CAA mandates and the report should describe that work. EPA has over the last year alone met with a number of state environmental officials to discuss state implementation problems under the 1990 Clean Air Act Amendments. As a result of the January 18, 1995 meeting with the National Governors Association (NGA) and the Environmental Council of the States (ECOS), 64 recommendations were forwarded to the Administrator on how to provide needed flexibility and approaches to meeting the goal of clean air for all Americans. We have made significant progress on almost every proposal. On about half the issues, we agreed with the NGA/ECOS position and we are handling those administratively (through rules or guidance). On 24 of the issues we agree with the concern and are working with the states to address the issue, although the approach may vary from the initial proposal. Finally, there were only four issues where we disagreed, but we are still discussing how to best address those concerns.

Some examples of the extensive flexibility EPA has provided to the states in the implementation of Clean Air Act-mandated requirements include:

- New rules and/or policies to provide flexibility for what is considered an "enhanced" vehicle inspection and maintenance program;
- Alternative ways for states to demonstrate attainment with the ozone standard;
- Extended attainment dates for areas affected by overwhelming transport of pollution from upwind areas;
- A proposed rule that would have States merge their construction and operating permit processes and automatically incorporate into their permit the State's construction requirements. This eliminates the additional delay and administrative burden of separate permit processes;

A proposed rule waiving for 5 years EPA's ability to object to most permit revisions, and allowing States to exempt insignificant permit revisions from any EPA or public review.

2) EPA is especially concerned about the second part of this recommendation to remove the certainty of federal aid penalties (sanctions) from those states which fail to meet national clean air requirements. As was mentioned earlier, over the last twenty years the nation has set several clean air deadlines, deadlines which were routinely missed. Though previous Clean Air Acts contained discretionary sanctions provisions, those provisions lacked the predictability and objectivity of the provisions which were added to the law in 1990. And today, it seems clear that these sanctions provisions are working. With only a handful of exceptions, areas are not being sanctioned, because --for the first time -- they are meeting deadlines.

EPA is convinced that joint state and federal efforts will prevent sanctions from being imposed in most states, and the record supports this belief. Of the roughly 2000 individual state implementation plan elements finally due by mid-1995, only two elements were not completed on time. Of the almost 400 sanctions "clocks" that were, by law, started during this process, only one set of sanctions is currently in place. Two other sanctions are in place for continuing violations of the health-based limits on lead pollution. In contrast to the pre-1990 cycle of failure which characterized earlier Clean Air Act deadlines, these numbers represent a clear success story.

Discussions with states on implementation issues have made it absolutely clear that the existence of mandatory sanctions has been the driving force behind this success. The truth is that neither states, sources, nor EPA wants sanctions to be imposed. The real world result is that all involved work extremely hard to avoid them, and the job gets done.

Effective Federal/State partnerships have provided the framework for an effective program to clean the air. Ultimately, the real success story of the 1990 Amendments is told by the fact that more than half of the smog and carbon monoxide areas in the country are now meeting the national health-based standards, and they are doing so on time. Moreover, more than two billion pounds of toxic emissions and millions of tons of sulfur dioxide emissions are being removed from the air each year.

These numbers represent tens of millions of people breathing cleaner air across the country. Almost without exception, every area is seeing reduced pollution levels, which means that threats to public health are being reduced, even if all areas do not yet meet the air quality standards.

The goal at EPA is to continue that progress. Given the overall success of the 1990 program - especially in contrast to the previous twenty years; we believe the right approach to addressing state's concerns is not to change the law, but instead to continue the recent efforts to redefine our partnerships.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

MAR 29 1996

The Honorable William Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, N.W.
Suite 450, South Building
Washington, D.C. 20575

Dear Governor Winter:

This letter responds to several of the issues raised by the Advisory Commission on Intergovernmental Relations' (ACIR) preliminary report with respect to the Americans with Disabilities Act of 1990 (ADA). As discussed in this letter, we have serious concerns about the report's analysis of the ADA's terms and enforcement provisions.

As an initial matter, we note that disability discrimination has had a devastating effect on people with disabilities. In enacting the ADA, Congress determined that it was necessary to provide a clear and comprehensive national mandate to end such discrimination and to bring people with disabilities into the economic and social mainstream of American life. Indeed, the statute has been successful at helping to eliminate disability discrimination and to integrate individuals with disabilities into all aspects of society. In addition, the cost of compliance has certainly been outweighed by the societal benefits of such integration.

Because the Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title I of the ADA which covers employment of individuals with disabilities, this letter is limited to issues involving employment. In this regard, the ACIR report voiced uncertainty about the ADA's reasonable accommodation requirements and concern about enforcement and litigation. The report also cited the need for technical assistance from the government. Below, we respond to the inaccuracies in the report.

ADA's Employment Provisions Are Modeled on the Rehabilitation Act and Are Not New for Most State/Local Governments

Most of the employment-related concerns raised by the ACIR report address confusion over the ADA's requirements. However, Congress specifically modeled the ADA on the Rehabilitation Act of 1973, which has covered many employers -- including state and local governments -- for over twenty years. See H. Rep. No. 485,

101st Cong., 2d Sess., pt. 3, at 27, 31 (1990). In addition, the EEOC's implementing regulations are modeled on the regulations implementing section 504 of the Rehabilitation Act, which have been in effect for 15 years.

ADA's Reasonable Accommodation/Undue Hardship Provisions Are Based on the Rehabilitation Act and Are Not Onerous

The ADA's reasonable accommodation and undue hardship provisions are not new, generally tracking the language of the Rehabilitation Act. As noted above, covered employers have been providing reasonable accommodation under the Rehabilitation Act for years.

In general, reasonable accommodation must be requested by an individual with a disability. 29 C.F.R. § 1630.9, Appendix; S. Rep. No. 101-116, 101st Cong., 1st Sess., at 34 (1989); H. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 65 (1990); H. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 39 (1990). In addition, an employer may choose whichever reasonable accommodation it wishes to provide, as long as it is sufficient to meet the individual's job-related needs. For example, an employer would not have to provide a state-of-the-art mechanical lifting device to an employee with a back-related disability if it provides a less expensive device that still enables him to perform the job. 29 C.F.R. § 1630.9, Appendix.

In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. For example, an accommodation may be something as simple as adding an extra lever to the fare box on a public bus for a driver who is unable to reach the box because of a disability, or providing a stool for an individual with a partially amputated leg. In fact, a recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than \$1,000, and only 3% cost more than \$1,000. See "Communicating the ADA, Transcending Compliance: A Case Report on Sears, Roebuck and Co." at 12. See also The President's Committee on Employment of People with Disabilities' Job Accommodation Network U.S. Quarterly Report at 14 (9/30/94) (78% of reasonable accommodations cost less than \$1,000; 17% of reasonable accommodations cost between \$1,001 and \$5,000); "ADA in Perspective; Business, Disabled Both Prosper Under Act," Capital Times, 1/12/95 (reasonable accommodations have not been costly for businesses).

The relatively minor costs of providing reasonable accommodation are offset by the benefits resulting from increased employment of people with disabilities, reduced dependence on Social Security, increased consumer spending by people with disabilities, and increased tax revenues. See Senator Tom Harkin, "The Americans with Disabilities Act: Four Years Later --

Commentary on Blanck, 79 Iowa Law Review 935, 937 (1994). See also "Communicating the ADA, Transcending Compliance: A Case Report on Sears, Roebuck and Co." (discussing gains in employee productivity as a result of reasonable accommodations); President's Committee Job Accommodation Quarterly Report, supra, at 14 (51% of responding companies saved between \$1 and \$10,000 by providing reasonable accommodation; 42% saved between \$10,000 and \$100,000).

Moreover, if a reasonable accommodation would impose an undue hardship for an employer, the employer does not need to provide the accommodation. The ADA specifically looks at such things as the cost of the accommodation in relation to the particular employer's resources, rather than using a "one size fits all" approach. 29 C.F.R. § 1630.2(p), Appendix.

The EEOC has expressly stated other limitations on an employer's obligation to provide reasonable accommodations. For example, the EEOC has written that an employer is not required to provide items that are primarily for the personal use and benefit of the individual, such as eyeglasses, hearing aids, and wheelchairs. Nor is an employer required to reassign essential job functions or create a new job, lower performance standards for essential functions, provide additional paid leave, or excuse misconduct. See 29 C.F.R. §§ 1630.2(o), 1630.9 & Appendices; "Technical Assistance Manual on the Employment Provisions (Title I) of the ADA," Ch. 3.

In cases where an individual claims that the employer failed to provide reasonable accommodation, federal law expressly limits monetary remedies if the employer acted in good faith to identify and provide an accommodation. Specifically, the Civil Rights Act of 1991 states that, in such instances, the employer will not be liable for compensatory or punitive damages. 42 U.S.C. § 1981A.

The EEOC has provided a wealth of guidance on an employer's reasonable accommodation obligations and the undue hardship defense. See 29 C.F.R. §§ 1630.2(o), 1630.9 & Appendices; Technical Assistance Manual Ch. 3. For example, the EEOC has given guidance concerning the process of determining appropriate reasonable accommodations and has provided numerous examples of such accommodations.

ADA's Enforcement Mechanisms are Not New

The ACIR report's criticism of ADA enforcement mechanisms is unfounded in light of established and workable procedures which have been operating for years under federal civil rights statutes. For example, although the report recommends designating a single federal enforcement agency, the EEOC has been effectively working with the Department of Justice for over

twenty years to enforce Title VII of the Civil Rights Act of 1964.

In addition, the report's recommendation that private actions against state or local governments should be barred is flawed in light of the ADA's purpose to eliminate disability discrimination. The United States Supreme Court has noted that the private litigant in Title VII actions "not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices." Alexander v. Gardner-Denver Co., 415 U.S. 36, 45 (1974). See also McKennon v. Nashville Banner Publishing Co., 115 S. Ct. 879, 884 (1995) ("private litigant who seeks redress for his or her injuries vindicates . . . objectives of the ADEA [Age Discrimination in Employment Act of 1967]"). This same rationale applies to the ADA. Importantly, private actions against state or local governments are also permitted under the Rehabilitation Act.


ADA's "Break-In" Period and EEOC's Technical Assistance

All new statutes inevitably have a general "break-in" period. Both employers and employees are going through a learning process concerning their respective rights and obligations. To assist in this process, the EEOC has actively engaged in ADA training over the past five years by publishing and distributing millions of copies of training materials (e.g., question and answer pamphlets, fact sheets and pamphlets discussing rights of individuals with disabilities and responsibilities of employers), responding to public inquiries, sponsoring training programs, and making thousands of public presentations. The EEOC has also published and distributed hundreds of thousands of copies of its Technical Assistance Manual which has been praised by both management-oriented groups and disability-rights groups. Free copies of EEOC publications may be requested by calling 1-800-669-3362.

Individuals and employers also are learning which federal agencies enforce the various sections of the ADA. Part of the technical assistance provided by EEOC has been information concerning enforcement responsibilities. See Technical Assistance Manual Chs. I & X, and accompanying "Resource Directory."

For the reasons discussed above, we recommend that you delete the ACIR report section on the ADA. We hope this information is helpful to you.

Sincerely,



Gilbert F. Casellas
Chairman



Congress of the United States
House of Representatives
Washington, D.C. 20515
March 22, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission On Intergovernmental Relations
800 K Street, N.W.
Washington, D.C. 20575

Dear Chairman Winter:

I am writing to express my deep concerns about the recommendations of the Advisory Commission on Intergovernmental Relations (ACIR) in the report, "The Role of Federal Mandates in Intergovernmental Relations."

I am particularly concerned with the recommendations in regard to civil rights laws for people with disabilities -- specifically, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). Efforts to guarantee equal rights for citizens with disabilities would be set back by the report recommendations to eliminate a private cause of action and to reduce state and local governments' compliance obligations under these statutes.

Under the ADA and the IDEA, flexibility and reasonableness are integral throughout the statutory language. Local and State governments are given discretion in determining program access and what is an appropriate cost associated with compliance. Further, the federal government provides substantial education and assistance services. It funds 80 percent of transportation costs, including construction and operation for the ADA. Also, community block grants may be used to satisfy statutory requirements. It is simply unnecessary that compliance requirements be temporarily or permanently suspended or made voluntary for states and counties experiencing financial difficulties in complying with the law.

Most importantly, the ADA and the IDEA are not unfunded mandates; they are civil rights acts. Therefore, they should not have been included in the parameters of the Unfunded Mandates Reform Act of 1995, under which ACIR was given its mandate.

The ADA and the IDEA are landmark pieces of legislation. They make a very clear legal statement regarding our nation's ideals of equalizing opportunity and eliminating discrimination. It is

ORIGINATED FROM:

WASHINGTON OFFICE: 1233 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515 (202) 225-2726
 HOME OFFICE: ROOM 4104, 300 ALA MOANA BLVD., HONOLULU, HAWAII 96850 (808) 541-2570

inconceivable that the ACIR would recommend annulling all the progress our country has made in our attitude toward and treatment of persons with disabilities. To make the IDEA and the ADA local option laws is to reduce the disabled to second class citizens. To remove their right to seek legal remedies would be **un-American**.

I urge you to reconsider and revise the ACIR recommendations in, "The Role of Federal Mandates in Intergovernmental Relations," report to Congress and the President.

Sincerely

Neil Abercrombie
Member of Congress

NA:ab

CHRISTOPHER J. DODD
CONNECTICUT

COMMITTEES:

BANKING, HOUSING, AND
URBAN AFFAIRS

BUDGET

FOREIGN RELATIONS

LABOR AND HUMAN RESOURCES

United States Senate

WASHINGTON, DC 20510-0702

WASHINGTON OFFICE:
444 RUSSELL SENATE OFFICE BUILDING
(202) 224-2823
TDD (202) 224-5464

STATE OFFICE:
100 GREAT MEADOW ROAD
WETHERSFIELD, CT 06109
(203) 240-3470
TDD (203) 529-7498

EMAIL: SEN_Dodd@Dodd.SENATE.GOV

March 27, 1996

The Honorable William F. Winter
Chairman
U.S. Advisory Commission on
Intergovernmental Relations
800 K Street, N.W., Suite 450, South Building
Washington, D.C. 20575

Dear Governor Winter:

I am writing to express my deep concerns about the preliminary recommendations contained in the Advisory Commission on Intergovernmental Relations (ACIR) report: "The Role of the Federal Mandates Intergovernmental Relations," particularly those that relate to the Family and Medical Leave Act of 1993 (FMLA).

As you know, I was the author of that Act and am Chairman of the Commission on Leave, which was established by the Act and was charged with examining the impact of family and medical leave policies. Although I have always believed that family leave policies were clearly in the national interest, as well as in the best interest of America's families and employers, I am very pleased that the Commission's research confirmed this view.

The Commission funded two major research studies that provide the first nationally representative data on the experiences of employees and employers with the Act and other family-friendly policies. Contrary to the expectations of some, the results indicate that businesses have not found that complying with the Act was costly or presented an administrative burden. Indeed, the vast majority of businesses reported no or only small cost increases; and some reported cost savings because of reduced employee turnover, increased productivity and lower training costs. Not surprisingly, the surveys also found that family leave policies help employees responsibly balance the needs of family and work.

Given this reassuring data, I was deeply disturbed to see that the ACIR's preliminary recommendations included the repeal of the protection the FMLA offers to employees of state and local governments. I believe the ACIR's analysis supporting this recommendation was flawed in two major ways.

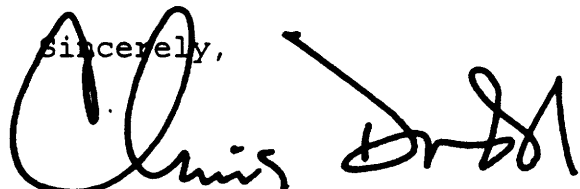
First, the recommendation is based on the untenable finding that there is not "sufficient national interest to justify" FMLA's coverage of state and local employees. The very enactment of the Act just a few years ago was based on findings, after seven years of hearings and congressional consideration, that just such a national interest exists. With growing demographic changes in the American workforce, employees were increasingly being forced to choose between their work and their care-giving responsibilities to their families.

FMLA provides workers with a modest benefit. It guarantees eligible employees 12 weeks of unpaid, job-protected leave to care for themselves, a new child or a seriously ill parent, spouse or child. State and local workers have these same needs and deserve the same protection. The ACIR's proposals simply did not address these employees.

Secondly, the ACIR's report asserts that the FMLA increases costs to employers. The report cites a General Accounting Office study completed before the passage of the law as the basis for this concern. Clearly, better data exists. The finds of the Commission on Leave were available to the Advisory Commission. Indeed, this data contradicts the ACIR's findings on cost increases. Eighty-nine percent of employers experienced no or only small increases in administrative costs. Similarly, 93 percent experienced no or only small increases in the cost of continuing benefits. There is no evidence that the experiences of state and local governments have been so different from that of other employers.

I appreciate your consideration of my concerns and am hopeful that the Advisory Commission on Intergovernmental Relations will reject the preliminary recommendations on the Family and Medical Leave Act of 1993.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dodd", with a long horizontal stroke extending to the right.

CHRISTOPHER J. DODD
United States Senator

E

**STATE AND LOCAL GOVERNMENT PUBLIC INTEREST GROUP COMMENTS ON
THE ROLE OF FEDERAL MANDATES IN INTERGOVERNMENTAL RELATIONS**

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
<i>Fair Labor Standards Act</i>	Support ACIR recommendation.	FLSA impacts on voluntary firefighters and payment of overtime to employees who are otherwise professionals. FLSA does not reflect reality of small communities. State and local govt. best qualified to determine overtime benefits.	Recommends rewriting FLSA regulations to relieve state and local government from retroactive liability for overtime; update standards for determining who is entitled to overtime pay; modify rules on suspensions without pay; permit paramedics to qualify for "7K" exemption; waive overtime pay requirements for public employees who desire to volunteer their services in emergencies.
<i>Family and Medical Leave Act</i>	Support ACIR recommendation with qualifiers.	Seems pointless for township with few employees to have to revise its personnel manual to incorporate information on FMLA and to post notices about employee's rights.	No policy but urges federal reimbursement for all costs association with complying with federal mandates.
<i>Occupational Safety and Health Act</i>	Support ACIR recommendation.	Same exemption for small business should apply to small local governments.	Calls for federal reimbursement of local government for all cost associated with complying with mandates. State and local governments should be given option to participate in federal OSHA program on a voluntary basis or be permitted to develop own program.

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
<p><i>Drug and Alcohol Testing of Commercial Drivers</i></p>	<p>Prefer Option 3 to make testing requirements more flexible. Supports regulatory flexibility to help local governments stretch limited resources to meet local needs; supports legislation or technical assistance to help cities initiate and carry out drug testing; supports actions to reduce exposure of city officials to lawsuits over locally developed drug testing programs; supports drug-free certification requirements to provide accountability without detailed prescriptive procedures.</p>	<p>Drug and alcohol testing regulations do not make sense for rural jurisdictions.</p>	<p>No policy but urges federal reimbursement to local governments for all cost associated with complying with mandates.</p>
<p><i>Metric Conversion for Plans and Specifications</i></p>	<p>Supports ACIR recommendation. General anti-mandates preamble opposes federal mandates that impose costs directly on municipal government and intrude upon autonomy of local government.</p>	<p>No comment on ACIR recommendation.</p>	<p>Supports ACIR recommendation.</p>

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
Medicaid: Boren Amendment	<p>No comment on ACIR recommendation.</p>	<p>No comment on ACIR recommendation.</p>	<p>No policy. Counties have expressed concern that repealing amendment and giving states sole responsibility for determining rates could lead to reduced reimbursements to county health facilities. NACo policy on Medicaid strongly opposes cost shifts from federal and state government due to changes in Medicaid.</p>
Clean Water Act	<p>Does not support ACIR recommendation. Supports increased federal funding, but considers it unrealistic.</p> <p>Supports increased partnership with states and localities for funding; supports grants and loans to help finance federal Clean Water mandates; support some national uniformity on environmental issues; supports more simplified and flexible approach to management of municipal stormwater run-off.</p> <p>Urges ACIR to address municipal stormwater mandate.</p>	<p>Supports ACIR recommendation that greater federal cost sharing is needed.</p>	<p>NACo policy supports federal funding to meet all CWA mandates imposed on counties; supports standards for water quality that are cost-efficient and based upon scientifically sound and consistent assessments of health, safety, and environmental risk; supports local government involvement in development and implementation of all plans under CWA; supports local government flexibility, extensions of time, and ability to use alternative methods.</p>

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
<p><i>Individuals with Disabilities Education Act</i></p>	<p>Supports ACIR recommendation. Supports greater state and federal assumption financing responsibility for special education. ACIR recommendation consistent with NLC liability policy statements.</p>	<p>No comment.</p>	<p>No policy, but urges federal government to reimburse local govt. for all cost associated with complying with mandate.</p>
<p><i>Americans with Disabilities Act</i></p>	<p>Supports ACIR recommendation. Supports establishment of reasonable federal compliance deadlines; supports federal funding to permit cities to achieve compliance and program changes that provide flexibility to target scarce resources most effectively to meet local needs.</p>	<p>Supports ACIR recommendation. Does not support making ADA voluntary for any community. Support consolidation of interpretation and enforcement within Departments of Justice, Transportation, and EEOC; supports major federal funding programs to be used in construction and retrofitting; support negotiation of compliance schedules. Notes that many of ACIR recommendations encouraged by DOJ and implemented through various federal and state agencies.</p>	<p>No position, but urges federal government to reimburse local government for all cost associated with complying with federal mandates. NACo policy calls for increased flexibility to allow local government to use least costly regulatory alternative that accomplishes legislative objectives.</p>

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
<i>Safe Drinking Water Act</i>	<p>Supports first part of recommendation (enactment of amendments similar to those approved by Senate), but opposes second portion (returning to the states full responsibility for safe drinking water standards). NLC policy states that federal drinking water regulations should be based on research and scientific evidence, public health protection, risk reduction, and cost; urges ACIR to adopt these recommendations.</p>	<p>Supports ACIR recommendation.</p>	<p>Supports ACIR recommendation.</p>
<i>Endangered Species Act</i>	<p>Supports ACIR recommendation, but urges inclusion of the need for decision-making based on sound science.</p>	<p>No Comment.</p>	<p>Supports ACIR recommendation.</p>

MANDATE	National League of Cities	National Association of Towns and Townships	National Association of Counties
<i>Clean Air Act</i>	Opposes ACIR recommendation. Supports some national uniformity to address air pollution. Urges ACIR to address reforming citizen suit provisions.	No Comment.	Supports cooperation with states and localities to formulate guidelines; supports technical assistance programs; supports federal leadership for an open objective process to ensure that clean air is attained in a cost effective fashion; supports vigorous enforcement of the Act; supports continuance of receiving funds directly from federal government; supports federal funding for start-up costs of inspections and maintenance programs; supports financial assistance in land use and transportation planning.
<i>Davis-Bacon Related Acts</i>	NLC recommends wholesale repeal. Supports ACIR recommendation.	NATaT recommends repeal of Davis-Bacon Act. No comment.	Supports ACIR recommendation. Supports ACIR recommendation.
<i>Required Use of Recycled Crumb Rubber</i>			

MANDATE	International City/County Management Association	National Conference of State Legislatures	National Governors' Association
<i>Fair Labor Standards Act</i>	Supports ACIR Optional Recommendation 4, which calls for amending the FLSA to resolve issues most often subject to intergovernmental controversies (salary basis and duties test; flexible work schedules; inclusion of emergency medical services employees in partial overtime exemption; clarification of inmate coverage; use of employer-owned vehicles without incurring overtime liability.)	Does not support ACIR recommendation. Supports states being given same regulatory and enforcement authority as federal government; supports addressing key issues such as salary basis test.	Opposes ACIR recommendation to repeal, but urges significant revision of FLSA regulations.
<i>Family and Medical Leave Act</i>	Supports state and local determination of fringe benefit provisions for public employees in lieu of federally mandated ones.	No policy.	Opposes ACIR recommendation to repeal.
<i>Occupational Safety and Health Act</i>	Supports the use of local research efforts, standard setting, and safety and risk management programs to protect public employees.	No policy.	Opposes recommendation to repeal, but opposes any mandatory application of OSHA laws or regulations on state and local governments.

MANDATE	International City/County Management Association	National Conference of State Legislatures	National Governors' Association
<i>Drug and Alcohol Testing of Commercial Drivers</i>	Opposes ACIR recommendation. Supports optional recommendation for regulatory flexibility; supports federal efforts to support safety of nation's transportation networks; support federal technical assistance to local governments that establish substance abuse testing and treatment for employees, including certification.	No policy.	No comment on drug and alcohol testing, but supports legislation to repeal the use of sanctions on federal highway trust funds.
<i>Metric Conversion for Plans and Specifications</i>	Supports ACIR recommendation.	Supports ACIR recommendation.	No comment on metric conversion, but supports legislation to repeal the use of sanctions on federal highway trust funds.
<i>Medicaid: Boren Amendment</i>	Supports alleviating federal burdens on states that may impact availability of funding for other critical state and local programs.	Supports ACIR recommendation.	Supports ACIR recommendation to repeal Boren Amendment.

MANDATE	International City/County Management Association	National Conference of State Legislatures	National Governors' Association
<i>Clean Water Act</i>	Supports ACIR recommendation concerning federal funding. Opposes ACIR recommendation regarding giving state and local government greater authority to develop their own control methods and timetables for implementing federal standards.	Supports ACIR recommendation for increased federal funding and restoration of direct CWA grants to state and local government. NCSL does not support elimination or weakening of minimum federal standards or uniform compliance timetables.	Strengthen recommendation to 1) give states flexibility to address nonpoint sources of pollution within defined reasonable period; 2) authorize use of new stormwater permits that promote use of best management practices; 3) provide incentives to states to utilize watershed-based management approach; 4) authorize at least \$2 billion/year to capitalize SRF.
<i>Individuals with Disabilities Education Act</i>	Supports ACIR recommendation, but urges increased funding from states as well as federal government.	Supports ACIR recommendation.	Strengthen recommendation to allow local education agencies to use up to 10% of IDEA funds from other categorical programs more flexibly and allow disciplinary policies to conform with state law.
<i>Americans with Disabilities Act</i>	Supports ACIR recommendation, but urges the need for reasonable and flexible compliance schedules as well as funding.	Supports ACIR recommendation. Does not have explicit policy on management of ADA enforcement mechanisms or coordination among federal agencies.	No comment.

MANDATE	International City/County Management Association	National Conference of State Legislatures	National Governors' Association
<i>Safe Drinking Water Act</i>	Support ACIR recommendation to adopt provisions similar to Senate bill. Supports Option 2 as an alternative recommendation.	Supports ACIR recommendation to adopt provisions similar to Senate bill but does not support the notion that states should be given full responsibility for setting drinking water standards; supports minimum federal standards and compliance timetables.	Strengthen recommendation to 1) repeal requirements for EPA to regulate 25 new contaminants every 3 years; 2) require EPA to conduct cost-benefit before establishing standards; 3) identify technologies appropriate for small water systems; 4) allow states to modify monitoring requirements; 5) authorize new state revolving fund.
<i>Endangered Species Act</i>	Supports ACIR recommendation; urges scientific decision making.	No policy.	Strengthen recommendation to 1) identify and create stable funding source; 2) provide incentives for species protection; 3) include states in collaborative rulemaking exempt from FACA; 4) authorize states to create expedited recovery planning process minimizing economic and social impacts.

MANDATE	International City/County Management Association	National Conference of State Legislatures	National Governors' Association
<i>Clean Air Act</i>	Opposes ACIR recommendation. Supports national uniformity measure; supports increased state flexibility to meeting air quality standards. Urges ACIR to recommend reform of citizen suit provisions.	Supports ACIR recommendation.	Strengthen recommendation to ensure 1) states have primary responsibility for control of air pollution; 2) states do not face unrealistic deadlines and sanctions; 3) state implementation plan review is timely; 4) flexibility of air pollution control implementation; 5) additional resources to assist states.
<i>Davis-Bacon Related Acts</i>	Supports ACIR recommendation.	Opposes ACIR recommendation. Supports further study of changing the floor level of costs or ratio of federal participation for application of rules to contracts.	No comment.
<i>Required Use of Recycled Crumb Rubber</i>	Supports ACIR recommendation.	Supports ACIR recommendation.	No comment, but supports repeal of sanctions on federal highway trust funds.

MANDATE	United States Conference of Mayors
<p><i>Fair Labor Standards Act</i></p>	<p>Support relieving public employers from liability for overtime pay for managerial and supervisory employees; support permitting paramedics to be treated similarly as firefighters regarding overtime; support clarification of certain limited job related activities on compensable work time; support allowing public employees to volunteer; allow use of more flexible work schedules with accounting periods other than 40 hour week.</p>
<p><i>Family and Medical Leave Act</i></p>	
<p><i>Occupational Safety and Health Act</i></p>	
<p><i>Drug and Alcohol Testing of Commercial Drivers</i></p>	
<p><i>Metric Conversion for Plans and Specifications</i></p>	
<p><i>Medicaid: Boren Amendment</i></p>	
<p><i>Clean Water Act</i></p>	<p>Supports increased federal focus on nonpoint sources; supports repeal of provisions requiring NPDES permits.</p>
<p><i>Individuals with Disabilities Education Act</i></p>	
<p><i>Americans with Disabilities Act</i></p>	<p>Support greater flexibility in compliance programs regarding curb ramps and paratransit; supports extended deadlines; support amending social and human service programs to use funds toward transportation services.</p>

MANDATE

United States Conference of Mayors

Safe Drinking Water Act

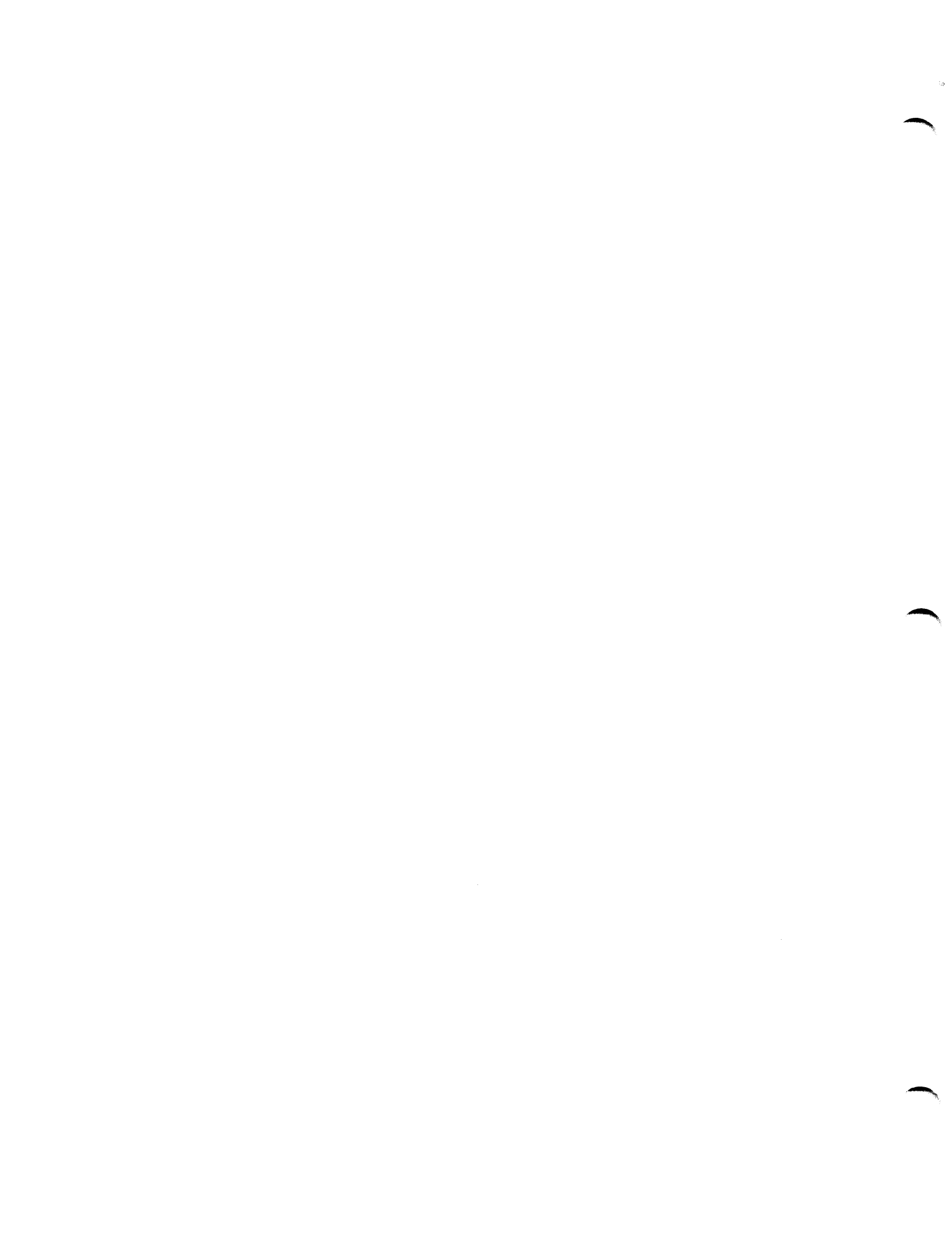
Endangered Species Act

Clean Air Act

Davis-Bacon Related Acts

Required Use of Recycled Crumb Rubber

Supports increased cost-benefit in setting new standards; supports repeal requirement for EPA to regulate 25 new contaminants every 3 years, and urges concentration on contaminants known to occur in water systems; supports establishment of SRF.



**The Role
of
FEDERAL MANDATES
in Intergovernmental Relations**

**A Preliminary ACIR Report
For Public Review and Comment
January 1996**

**The Role
of
Federal Mandates
in Intergovernmental Relations**

**A Preliminary ACIR Report
For Public Review and Comment**

**released: January 24, 1996
public comment period to end: March 15, 1996**

**U.S. Advisory Commission on Intergovernmental Relations
800 K Street, NW, Suite 450 South Building
Washington, DC 20575**

**Phone: (202) 653-5540
Fax: (202) 653-5429**

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PRELIMINARY ACIR REPORT ON FEDERAL MANDATES

Approved for Public Review and Comment
by the U.S. Advisory Commission on Intergovernmental Relations
January 5, 1996

INTRODUCTION

The *Unfunded Mandates Reform Act of 1995* (P.L. 104-4) represents a bipartisan agreement that something is wrong with American federalism as it has evolved in recent years. The law directs the Advisory Commission on Intergovernmental Relations (ACIR) “to investigate and review the role of federal mandates in intergovernmental relations” and to make recommendations to the President and Congress as to how the federal government should relate to state, local, and tribal governments. In this preliminary report, ACIR proposes for public review and comment recommended changes in federal policies to improve intergovernmental relations while maintaining a commitment to national interests.

CHANGES IN THE FEDERAL SYSTEM

The mandate issues examined in this report arose because American federalism no longer has clearly defined responsibilities for federal, state, and local governments. One result of this lack of defined roles has been increased federal involvement in activities historically considered to be state and local affairs. Federal involvement usually began with financial aid to achieve national goals. In recent years, federal involvement has taken the form of direct orders to meet federal requirements, often with no federal financial assistance. The extensive and complex nature of this involvement is illustrated by the following examples:

- More than 200 separate mandates were identified to ACIR by state and local governments, involving about 170 federal laws reaching into every nook and cranny of state and local activities.
- The ACIR report *Federal Court Rulings Involving State, Local, and Tribal Governments: Calendar Year 1994*, identified 3,500 decisions involving state and local governments, relating to more than 100 federal laws.
- State and local officials must comply with 33 federal laws to receive non-construction federal grants.

These numbers provide a dramatic picture of the cumulative effects of federal laws on state and local governments. They also confirm the need for better definition of the appropriate working relationships between the partners in the federal system. Relief from existing federal mandates will be especially important if state and local governments are to assume greater responsibilities from federal devolution.

DETERMINING THE APPROPRIATE FEDERAL ROLE

In *Garcia v. San Antonio Metropolitan Transit Authority* (1985), the Supreme Court made it clear that constitutionally the Congress is responsible for determining the precise scope of national authority over state and local governments. The court recognized that clear lines defining the appropriate scope of federal activities could not be drawn and, instead, left it to the political process to determine appropriate governmental roles.

Historically, the political process has determined that some activities are so important to national interests that a federal role is generally accepted as necessary. Among the most obvious is legislation protecting civil rights granted by the Constitution. In an earlier period, the economic emergency of the 1930s produced federal programs to alleviate national economic and social problems. In other instances, national policy is necessary because the problems transcend state lines, such as when dirty air or dirty water from one state intrude on another state. As a result, some federal government mandates on state and local governments are an acceptable feature of the U.S. federal system.

In recent years, however, the Washington tendency has been to treat as a national issue any problem that is emotional, hot, and highly visible. Often, this has meant passing a federal law that imposes costs and requirements on state and local governments without their consent and without regard for their ability to comply. Such actions, even though they may have broad public support, are damaging to intergovernmental comity. The challenge facing the federal government is to exercise power to resolve national needs while, at the same time, honoring state and local rights to govern their own affairs and set their own budget priorities.

The wide diversity of federal mandates makes it difficult to establish uniform ways to determine whether a mandate is proper or improper from an intergovernmental perspective. Nevertheless, ACIR has been charged with making determinations about existing mandates as they affect state and local governments. In reaching its conclusions, the Commission considered several key questions:

- Does the national purpose justify federal intrusion in state or local affairs?
- Are the costs of implementing the mandate appropriately shared among governments?
- Is maximum flexibility given to state and local governments in implementing the mandate?
- Are there changes that can be made in the mandate to relieve intergovernmental tensions while maintaining a commitment to national goals?

THE ACIR REVIEW OF EXISTING MANDATES

As required by the *Unfunded Mandates Reform Act*, ACIR started its review process by adopting criteria describing mandate issues of significant concern and the types of problems to be analyzed. These criteria were issued on July 6, 1995 (see Appendix B). Information about mandates meeting the criteria were solicited from state and local governments, federal agencies,

and the public. ACIR also relied on a variety of efforts by others to help in identifying mandates needing attention:

- The National Governors Association requested each governor's office to list the mandates of most concern in their states.
- A general appeal was made in the magazines and newsletters of national and state groups representing state and local governments.
- A survey of small rural governments was conducted by the National Rural Development Partnership.
- Officials attending national and state association meetings were asked to identify troubling mandates.

Information was received from over half the states, eight municipal leagues, four state associations of counties, the national associations representing state and local governments and their officials, and directly from a variety of local government officials.

ACIR selected 14 mandates for analysis. The 14 mandates selected constitute only a small portion of the over 200 identified, but they illustrate the diverse, complex, and troubling challenges that federal mandates pose for the intergovernmental system. *While only 14 mandates are reviewed in this report because of time and resource limitations, the Commission believes that many more of the over 200 mandates identified need to be evaluated. ACIR urges that a review of additional mandates be authorized as soon as possible.*

The selection of the 14 mandates was based on:

- (1) The preponderance of communications identifying the mandates as troubling to state and local governments;
- (2) The significance and diversity of issues posed for intergovernmental relations; and
- (3) The criteria published by the Commission on July 6, 1995.

BASIS OF RECOMMENDATIONS

In considering its recommendations on the intergovernmental role of federal mandates, the Commission was guided by the published criteria. The criteria defined mandates of significant concern as those that: (1) require state or local governments to expend substantial amounts of their own resources without regard for state and local priorities; (2) abridge historic powers of state and local governments without a clear showing of national need; (3) impose requirements that are difficult or impossible to implement; and (4) are the subject of widespread objections. The 14 mandates subjected to intensive review in this report meet one or more of these criteria.

The criteria also identified a number of specific conditions for which ACIR should make relief recommendations. The specific conditions were: requirements not needing national action or, if needing national action, not federally funded; unnecessarily rigid; unnecessarily complex or prescriptive; unclear goals or standards; contradictory or inconsistent provisions; duplicative

provisions; obsolete provisions; lacking in adequate scientific and economic basis; lacking in practical value; or would create undue financial difficulties for the governments.

ACIR recognizes that mandate issues are more than disagreements between political scientists about which government has the *right* to make a decision. Instead, mandate issues relate to the nuts and bolts of government operations that are necessary to provide effective protection and efficient services. This means evaluating how the mandate will affect not only costs but routine government operations as well.

In examining the individual mandates, the Commission considered the fundamental intergovernmental issues associated with the mandate, and did not evaluate the specific mandate requirements. We urge those reviewing these analyses and the accompanying recommendations to give similar attention to the roles of federal, state, and local governments as they relate to the mandate.

COMMON ISSUES

ACIR's review of existing mandates found a number of common issues that are troubling federal, state, and local government relations. These issues and ACIR's proposed recommendations to address them include:

1. Detailed procedural requirements. State and local governments are not given flexibility to meet national goals in ways that best fit their needs and resources. The imposition of exact standards or detailed requirements, in many instances, merely increases costs and delays achievement of the national goals. *The federal role in implementation should be to provide research and technical advice for those governments that request it, but, in general, state and local governments should be permitted to comply with a mandate in a manner that best suits their particular needs and conditions.*

2. Lack of federal concern about mandate costs. When the federal government imposes costs on another government without providing federal funds, the magnitude of costs is often not considered. If the federal government has no financial obligation, it has little incentive to weigh costs against benefits or to allow state and local governments to determine the least costly alternatives for reaching national goals. *The federal government should assume some share of mandate costs as an incentive to restrain the extent of the mandate and to aid in seeking the least costly alternatives.*

3. Federal failure to recognize state and local governments' public accountability. State governments often are treated as just another interest group, as private entities, or as administrative arms of the federal government, not as sovereign governments with powers derived from the U.S. Constitution. Local governments, despite the important role they play in delivering government services, have been given even less consideration. Non-governmental advocacy groups' views have sometimes been given more attention than those of state and local governments. *Federal laws should recognize that state and local governments are led by elected officials who must account to the voters for their actions, just as the President and Members of Congress.*

4. Lawsuits by individuals against state and local governments to enforce federal mandates. Many federal laws permit individuals or organizations to sue state and local governments over questions of compliance, even though a federal agency is responsible for enforcement. Federal laws, however, are often written in such broad terms, it is not clear what is required of federal, state, and local officials. In these circumstances, permitting litigation brought by individuals subjects state and local governments to budgetary uncertainties and substantial legal costs. Because the federal agency is not directly involved with the costs and problems of this litigation, it has little incentive to propose amendments that would clarify the law's requirements. *Only the federal agency responsible for enforcement of a law should be permitted to sue state and local governments.*

5. Inability of very small local governments to meet mandate standards and timetables. The requirements for many federal mandates are based on the assumption that all local governments have the financial, administrative, and technical resources that exist in large governments. Many very small local governments have only part-time staffs with little technical capability and very limited resource bases. Extending deadlines or modifying requirements for these small governments may have minimal adverse effects on the achievement of overall national goals but may make it possible for such governments eventually to comply. *Deadlines should be extended and requirements modified for very small local governments.*

6. Lack of coordinated federal policy with no federal agency empowered to make binding decisions about a mandate's requirements. There are mandates that involve several federal agencies. This has resulted in confusion about what the law requires and how state and local governments can know when they are in compliance. In addition to making state and local governments aware of mandate requirements, federal agencies should explain the reasons for the mandate and should assist in taking the actions necessary for implementation. *A single federal agency should be designated to coordinate each mandate's implementation and to make binding decisions about that mandate.*

SUMMARY OF RECOMMENDATIONS ON INDIVIDUAL MANDATES

ACIR's proposed recommendations for individual mandates can be summarized into three categories.

The Commission finds that the following mandates as they apply to state and local governments do *not* have a sufficient national interest to justify intruding on state and local government abilities to control their own affairs. While the Commission does not take issue with the goals of these mandates, it believes that achieving those goals can be left to elected state and local officials. **Thus, ACIR recommends repealing the provisions in these laws that extend coverage to state and local governments.**

Fair Labor Standards Act

Family and Medical Leave Act

Occupational Safety and Health Act

Drug and Alcohol Testing of Commercial Drivers

Metric Conversion for Plans and Specifications

Medicaid: Boren Amendment

Required Use of Recycled Crumb Rubber

The Commission finds that the following mandates are necessary because national policy goals justify their use. However, the federal share of the costs should be increased or the stringent requirements and deadlines imposed on state and local governments should be relaxed. These mandates impose substantial costs on state and local governments as a result of requirements that are unnecessarily burdensome. **Thus, ACIR recommends retaining these mandates with modifications to accommodate budgetary and administrative constraints on state and local governments.**

The Clean Water Act

Individuals with Disabilities Education Act

Americans with Disabilities Act

The Commission finds the following mandates are related to acceptable national policy goals, but they should be revised to provide greater flexibility in implementation procedures and more participation by state and local governments in development of mandate policies. **Thus, ACIR recommends revising these mandates to provide greater flexibility and increased consultation.**

The Safe Drinking Water Act

Endangered Species Act

The Clean Air Act

Davis-Bacon Related Acts

SUMMARY OF EACH MANDATE

Listed below are summaries of each mandate reviewed. For each individual mandate, *Appendix A* contains a full description of the requirements imposed, a discussion of its background and history, a listing of the concerns expressed by state and local governments, and recommendation options that were considered.

Fair Labor Standards Act

The *Fair Labor Standards Act* (FLSA) (29 U.S.C. 201, et seq.) establishes minimum standards for wages, overtime compensation, equal pay, recordkeeping, and child labor for nearly every workplace in the United States. In 1974, amendments to the FLSA extended the applicability of the law to the public sector and treated state and local governments as if they were private entities. So, unlike the federal government, a state or local government cannot amend its personnel policies to accommodate situations unique to government employment or to reduce budgets.

Considerable contention has also arisen over the proper implementation of FLSA in the state and local public sector. The overtime pay provisions, in particular, have resulted in substantial litigation, with many state or local employees winning retroactive pay for work deemed by a court to qualify as overtime. The liability for many states and localities is in the millions of dollars and could go much higher. Moreover, even if a state or local government is successful in defending its employment policies as consistent with FLSA, there are often substantial litigation costs.

The employment policies of state and local governments should be set solely by the employment policies of those governments. The public accountability of elected officials and the collective bargaining powers of employee unions will provide adequate protection for workers.

RECOMMENDATION: *Repeal provisions of FLSA covering state and local government employees.*

Family and Medical Leave Act

The *Family and Medical Leave Act of 1993* (FMLA) (29 U.S.C. 2601 et seq.) requires employers to provide employees up to 12 weeks of unpaid leave each year to care for a newborn, adopted, or foster child. Leave also must be granted for care of a seriously ill child, parent, or spouse. In addition, employees may use unpaid family and medical leave for personal illnesses. Medical insurance benefits must be continued during the leave and employees must be reinstated into the same or an equivalent position after leave.

The law forced state and local governments to revise long-standing personnel policies and created unfunded costs related to extending medical insurance coverage to employees on family and medical leave, to temporary hiring of replacement workers, and to additional training and personnel counseling activities. While the law contains special provisions for federal government employees, state and local governments are treated the same as private entities.

Leave policies of state or local governments should be determined solely by the employment policies of those governments. The public accountability of elected officials and the collective bargaining powers of employee unions will provide adequate protection for workers.

RECOMMENDATION: *Repeal the provisions of FMLA that cover state and local government employees.*

Occupational Safety and Health Act

The *Occupational Safety and Health Act of 1970* (OSHA). (29 U.S.C. 651-678) establishes standards for safe, healthy, and productive work environments. State governments and their political subdivisions, as well as the United States government, are specifically *excluded* from the definition of “an employer” under the act. In the case of state governments and their political subdivisions, OSHA has no requirements unless a state volunteers to participate in the federal program. States that volunteer to administer the federal OSHA program within their jurisdiction are required to extend federal requirements to all public employees in the state.

Twenty-three states have assumed responsibility for operating the federal OSHA program. Two additional states have federally approved OSHA plans only for state and local government employees. Even in the remaining states, however, there may be an impact, or a perception of an impact, because some OSHA requirements are replicated in state laws or are perceived as mandatory even though they are not.

Numerous complaints expressed about OSHA policies in both participating and non-participating states attest to the widespread misunderstanding about the law's coverage and the substantial compliance costs. Making all states, not just the non-participating states, exempt from OSHA would allow all states to set their own health and safety standards, taking into consideration their priorities and budgetary constraints. Such a policy would give states flexibility similar to that given federal agencies.

RECOMMENDATION: *Repeal the provisions extending OSHA coverage to public employees in participating states.*

Drug and Alcohol Testing of Commercial Drivers

The *Omnibus Transportation Employee Testing Act of 1991* (P.L. 102-143, Title V) directs the Department of Transportation (DOT) to issue regulations establishing a program which "requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use . . . of alcohol or a controlled substance." The motor carrier requirements cover a substantial number of state and local government employees who have commercial drivers licenses, and require them to undergo random drug and alcohol testing by certain deadlines. The law is inconsistent in that it includes some employees, such as public works drivers, but excludes law enforcement and emergency workers from testing requirements.

Strict drug and alcohol testing requirements for small rural communities and transportation systems with few employees create situations where costs of compliance are disproportionately high relative to potential findings. State and local governments are concerned about drug and alcohol problems and will take their own measures to insure that their drivers are not a threat to public safety.

RECOMMENDATION: *Repeal provisions making some state and local employees subject to the federal drug and alcohol testing requirements for commercial drivers.*

Metric Conversion for Plans and Specifications

The *Omnibus Trade and Competitiveness Act of 1988* requires that each federal agency use the metric system of measurement in its procurement, grants, and other business-related activities, except to the extent that such use is impractical. The act permits the continued use of traditional weights and measures in non-business activities. Based on this law, the Department of Transportation (DOT) requires state and local governments to convert to metric for local construction plans and specifications by October 1, 1996.

The *Unfunded Mandates Reform Act of 1995* specifically requires ACIR to consider requirements that state, local, and tribal governments utilize metric systems of measurement. The principal concern, expressed primarily by local governments, is the requirement to use metric measurements in the design and construction of federally aided projects. While most local governments may be technically able to prepare plans and specifications in metric by the deadline, they cite several problems, including substantial costs. Another problem is that local contractors and suppliers are not used to working with metric measurements. As a result, the potential for mistakes in the bidding and construction process is significantly increased. In addition, metric will create problems for right-of-way acquisitions with property owners, surveyors, and local deed registries.

States have made considerable progress in the transition to metric, but more than 2,200 waivers have been necessary to relieve hardship situations. Despite the waivers, the deadline for conversions will create substantial problems for many local governments without corresponding benefits. Rather than require all states to implement metric requirements on the same timetable, a better approach is to encourage states that are well along on their conversions to continue assisting their local governments with the process. Successful implementation in these states will provide support for others to complete the conversions voluntarily.

RECOMMENDATION: *Repeal requirements that state and local governments convert to metric on a federal timetable as a condition of receiving federal aid.*

Medicaid: Boren Amendment

The Boren Amendment requires states to establish reimbursement rates to pay hospitals, nursing facilities, and intermediate care facilities for services provided to persons eligible for assistance through the Medicaid program. The mandated federal criteria provide that the reimbursement rates must be “reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards”

The intent of the Boren Amendment was to give states a means of controlling costs related to reimbursement claims from providers of Medicaid services. Rather than basing reimbursements on a cost-related payment requirement for hospitals and nursing home services, the amendment allows states to pay for services based on a predetermined reimbursement rate, giving states a basis for denying reimbursement for costs determined to be in excess of that necessary to provide “efficiently and economically” delivered services.

Although flexibility was intended, the use of vague and undefined terms in the amendment created problems that were compounded by the federal government's decision not to issue regulations defining the vague terms. To add further confusion, the law, while requiring reimbursement rates to be “determined in accordance with methods and standards developed by the State,” also requires the federal government to be satisfied with the state-determined rates. To implement this requirement, the federal government requires state processes for determining rates and the rates themselves to be a part of Medicaid State Plans, subject to approval by the Secretary of Health and Human Services.

The vagueness of the statutory language, combined with the lack of regulatory definitions, has resulted in substantial litigation, with some courts viewing the Boren Amendment as a cost based payment standard in which *all* cost incurred by the providers must be reimbursed. In these instances, states may be liable for significant sums to cover the retroactive rate increases ordered by the court for the group of providers involved in the suit even if their rate schedule was approved by the federal government. In some cases, the additional payments made as a result of a court-ordered retroactive rate increase are not eligible for cost-sharing from the federal government.

Because Medicaid is a state administered program and states are responsible for the quality and safety of medical services, states should be allowed to conduct reimbursement rate negotiations with Medicaid service providers without preconditions set by federal law. Litigation against states by medical service providers should be limited to matters related solely to the state's own laws and policies.

RECOMMENDATION: *Repeal the language of the Boren Amendment and insert language making states solely responsible for determining Medicaid reimbursement rates.*

The Clean Water Act

The *Clean Water Act* requires states to designate the uses of water, develop water quality criteria to protect those uses, monitor the condition of waters, and report on water quality every two years. States may administer a permit program for industrial and municipal pollution discharges and develop programs for the control of pollution from diffuse or nonpoint sources. Local governments are required, either directly by the federal government or indirectly through state implementation of federal laws, to treat sewage to national standards and to control discharges from combined sewers and stormwater drains.

In the *Water Pollution Control Act Amendments of 1972*, Congress provided for a comprehensive national program to protect water quality. Key provisions included national minimum standards for control of pollutants from industrial and municipal sources, additional controls in permits as needed to meet state standards, and significant grant assistance to support construction of municipal sewage treatment facilities. In effect, states and local governments ceded control over water pollution controls to the federal government in return for substantial federal financial aid.

In 1987, the federal government changed the arrangement by a transition from direct grants to capitalization of state loan funds. Loan funds reduce interest costs for some projects, but they still require local governments to pay virtually the entire costs of future pollution control projects. In addition, the 1987 amendments required municipalities to remove harmful amounts of toxins from their sewage and to establish stormwater management programs. A national program originally supported and encouraged by state and local governments is no longer a balanced partnership to clean up the nation's waterways. Federal requirements, especially those dealing with stormwater drainage, have become increasingly stringent and expensive to implement. At the same time, the federal funding to aid in the cleanup has virtually disappeared.

Fully restoring the successful partnership requires either a return to substantial federal sharing in the costs of clean-up, or a relaxation of inflexible standards and deadlines on state and local

governments. If there is not a sufficient national priority to justify federal spending, then state and local governments should be able to use the least costly alternatives and to work within their fiscal constraints. State and local governments traditionally have been concerned about reducing pollution, and they should be given authority to work constructively with federal officials to design realistic programs that can be completed within technical and budgetary constraints.

RECOMMENDATION: *Either restore direct federal sharing of costs or give state and local governments greater authority to develop their own control methods and timetables for implementing federal standards for clean water.*

Individuals with Disabilities Education Act

The *Individuals with Disabilities Education Act (IDEA)* (P.L. 101-476) requires local school systems to provide a free appropriate education for children with disabilities. The law provides that federal aid to states for elementary and high school education will be available only after a state has a federally approved plan for educating children with disabilities. In addition, *IDEA* requires participating states to establish specific administrative procedures by which parents or legal guardians may challenge the identification, evaluation, or educational placement of the children. Requirements of the law are conditions of federal assistance or duties arising from participation in this voluntary federal program.

IDEA has provided millions of students with disabilities access to a free and appropriate education, but the law imposes significant costs and administrative burdens on state and local governments. Although the Act currently includes a provision authorizing the federal government to pay up to 40 percent of services to be provided under the law, only about 8 percent is currently appropriated. The law also limits the flexibility of states and local governments to combine *IDEA* funds with other funding streams to meet the unique needs of their children.

The resolution of disputes under the Act also has become overly litigious and has added to implementation costs. Currently, local agency decisions may be challenged in either state or federal court, and, in some cases, parents bringing actions on behalf of their children may be entitled to reimbursement for their costs, including attorney and court fees. ACIR's *Federal Court Rulings Involving State, Local, and Tribal Governments: Calendar Year 1994* emphasizes the litigious nature of this law.

RECOMMENDATION: *Either increase federal funding to the 40 percent authorized level or relieve states from prescriptive and costly administrative mandates. Alternative dispute resolution practices should be required, and any court challenge based on the federal law should be brought by state or federal agencies, not by individuals.*

Americans with Disabilities Act

The *Americans with Disabilities Act of 1990 (ADA)* (P.L. 101-336) prohibits discrimination against individuals with disabilities in employment, public services, and public accommodations.

Any state or local government policies found to be inconsistent with ADA provisions are to be modified as soon as feasible. Each government program is to be examined for physical barriers to access and for remedial measures that need to be taken.

ADA provides important and necessary social benefits, but it is creating problems for state and local governments because of expensive retrofitting and service delivery requirements, confusing and ambiguous statutory language, and insufficient technical assistance provided by the federal government. Further, virtually no federal funding has been appropriated to cover most state and local compliance costs. With tight budgets and limited time to correct structural obstacles to improve public accommodation, it has been difficult for many governments to implement the extensive changes required. Structural changes to existing buildings to meet "program accessibility" requirements were to be made by January 26, 1995, a deadline not met by many state and local governments.

Also, the use of the terms "reasonable accommodation," "undue hardship," "readily achievable," and countless other broad expressions in the law has subjected state and local governments to numerous lawsuits over legal interpretations of ADA. The penalties for noncompliance are severe, and legal costs can be substantial.

Federal enforcement of ADA is uncoordinated, with eight federal departments having some enforcement power. The prime responsibility for processing complaints under ADA are the Justice Department and the Equal Employment Opportunity Commission. The Federal Communications Commission manages telecommunications issues. The National Council on Disability is an independent federal agency that identifies emerging issues and recommends disability policy to the President and Congress. The Architectural and Transportation Barriers Compliance Board provides some educational and technical assistance regarding accessibility.

RECOMMENDATION: *Either provide increased federal funding to state and local governments to assist in compliance, including funding for paratransit, or modify some deadlines and requirements to let state and local governments meet ADA goals in a manner that recognizes state and local technical and budget constraints without abridging the national commitment to the rights of individuals with disabilities. In addition, a single federal ADA enforcement and assistance agency should be designated to coordinate enforcement and technical assistance and legal action against state and local governments should be limited to actions brought by the federal government.*

The Safe Drinking Water Act

The *Safe Drinking Water Act* (SDWA) regulates drinking water standards for the 58,530 waterworks serving 25 or more persons on a regular basis. It establishes maximum levels for contaminants known to occur in public water systems, establishes wellhead protection programs, certifies and specifies appropriate analytical and treatment techniques, and establishes public notification procedures. It requires drinking water suppliers to assume a wide range of responsibilities, including monitoring of the water supply.

The safety of drinking water is a public health issue. Prior to 1974, states had responsibility for the safety of drinking water, but they generally relied on standards set by the Public Health Service. Since drinking water endangers not only the residents of a local community and state but also those traveling interstate, the regulation of drinking water may be justified as a national concern. It should be recognized, however, that other vital public health concerns, such as restaurant inspections, are the responsibility of state and local governments.

State and local concerns over the *Safe Drinking Water Act* hinge on what constitutes safe drinking water and how to achieve it in the most cost-effective way. These governments do not object to assuming the costs of providing safe drinking water, but some do object to incurring costs that in their opinion do not improve water quality. The existing law overreached in the standards and compliance requirements it imposed on local water systems.

Amendments recently approved by the Senate will repeal some of the most onerous provisions, including mandatory additional tests for contaminants, tests for contaminants not a threat in local areas, and eased provisions for treatment of surface water supplies. The Senate amendment also authorizes funding for state capitalization loan funds to reduce interest costs of compliance. The amendments, however, do not alter intergovernmental relationships in the SWDA.

RECOMMENDATION: *Enact amendments similar to those approved by the Senate and establish a long-term goal of returning to the states full responsibility for safe drinking water standards.*

Endangered Species Act

The *Endangered Species Act of 1973 (ESA)* (P.L. 97-304) requires every federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed threatened and endangered species or the destruction or adverse modification of critical habitat. Under the law, state, local and tribal governments may not obtain a federal permit, license, or grant if the project does not comply with federal standards for protecting endangered species. There is an exemption process allowing consideration of economic factors, but these provisions are rarely utilized.

State and local governments feel they have an inadequate share of decision-making authority in the management and planning decisions affecting the listing of threatened and endangered species. The listing process is rigid and limits state and local flexibility to apply the Act's provisions in their jurisdictions to meet local conditions. There is concern that valuable economic development activities within their boundaries, both public and private, are being impaired by strict federal regulation.

State, local and tribal governments should be full partners with the federal government in the preservation of threatened and endangered species. These governments should be granted shared authority for species protection, as well as flexibility to implement conservation plans for specific species within their boundaries. Broader participation by state, local, and tribal governments will improve the data collection process and allow biological science, economic constraints, and available management resources to be taken into account on a regional basis.

RECOMMENDATION: *Give state and local governments an official role in the management and planning decisions affecting the listing process beyond the traditional consultation and full notice and comment requirements currently in effect. In addition, exemptions to ESA should be applied more extensively to minimize social and economic impact on state, local, and tribal governments of recovery planning and listing procedures.*

The Clean Air Act

The *Clean Air Act of 1977* (P.L. 95-95) requires states to submit for federal approval a plan for meeting air quality standards established by the federal government. These plans must include emissions limitations and schedules of compliance. The federal government will prepare a plan for any state that fails to comply. The act spells out how to measure different types of pollution, the standards that must be met for each type of pollution, the specific compliance measures that may be taken, and the deadlines for those actions. Some federal financial assistance for planning and implementation is authorized in the law, but each state must provide assurances that “the State or general purpose local governments will have adequate personnel, funding, and authority under state and, as appropriate, local law to carry out such implementation plan.”

The initial demand for federal help in controlling air pollution came from cities that were unable to act effectively on an individual basis. Because the federal government recognized the need to act on regional bases, and in recognition of the federal system as viewed at that time, the states were encouraged by the federal government to assume responsibility for controlling air pollution and were given federal grants to assist in implementing such controls. By 1970, only 21 states had submitted implementation plans, and the federal government decided it was necessary to set standards (including vehicle emissions) and to enforce state implementation.

In 1990, amendments to the law targeted smaller pollution sources, including facilities owned by local governments. Governments in areas with moderate carbon monoxide pollution were required to adopt vehicle inspection and maintenance programs and to use cleaner oxygenated fuels. Areas with moderate ozone pollution were required to set up similar programs and to require use of gasoline-pump devices to capture vapors. Failure to implement these programs can result in the loss of federal highway funds.

As the requirements have become increasingly detailed and specific, states have become implementers of federal laws with less and less discretion over how to implement them and with less federal financial assistance for their administration. As a result, the requirements often do not reflect conditions and citizens' preferences in the state.

RECOMMENDATION: *Permit states to develop their own ways of meeting federal air quality standards, and eliminate financial aid penalties if states are making good faith efforts to comply.*

Davis-Bacon Related Acts

The *Davis-Bacon Act* (40 U.S.C. 276a-7) only applies to federal government contracts over \$2,000 for construction, alteration, and/or repair work. The law requires such contracts to specify the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. The minimum wages must be based on the wages determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on similar contracts in the city, town, village, or other civil subdivision of the state in which the work is to be performed.

About 60 other federal laws make compliance with Davis-Bacon provisions a condition-of-aid for grants to state and local governments (e.g., construction programs related to low-income housing, highways, and waste water treatment facilities). Some of the Davis-Bacon related laws contain special exceptions concerning the way in which a grantee must comply with Davis-Bacon requirements, but most of them apply the law without modification. Compliance with the provisions is generally required even if the dollar amount of the federal grant is a minimal share of the total project costs.

State, local, and tribal governments should be able to manage their construction project costs without Davis-Bacon pre-conditions when the major share of the project is being funded by the state or local government. Besides potentially increasing costs, Davis-Bacon requirements impose extensive reporting and recordkeeping that may be especially burdensome for small projects, and may make it difficult for small local businesses to compete.

To protect the national interests, which led to the inclusion of Davis-Bacon compliance requirements in about 60 federal laws, while recognizing state and local concerns, each related act should be amended to limit application of Davis-Bacon provisions to state and local construction projects over a certain dollar level and to projects where federal funding exceeds more than half of the total project costs. For example, a related act could be amended to apply Davis-Bacon provisions only in projects with a total dollar cost in excess of \$1 million and in which the federal grant funding for the project exceeded 50% of total project costs.

RECOMMENDATION: *Amend Davis-Bacon related laws to exempt projects below a larger dollar cost than now prevails and below a certain federal percentage of cost sharing from compliance with Davis-Bacon provisions in state and local construction projects.*

Required Use of Recycled Crumb Rubber (Repealed)

The requirement for including a percentage of waste-tire (crumb rubber) in asphalt pavement on federally aided highway projects was intrusive and infringed on traditional state-regulated activities. If states did not comply with the percentages, they were penalized by the withholding of an equivalent percentage of highway funds. The federal intrusion into this area of state operations, along with the withholding of grant money for non-compliance, demonstrate the intergovernmental breakdown surrounding this particular issue.

In addition, the construction industry had concerns about both the integrity of the pavements and the life-cycle maintenance costs of crumb-rubber-mix asphalt. Research has not shown any

improved life of asphalt pavements using rubber, while the costs double. This provision mandated a particular engineering approach that is still experimental and has unresolved environmental, health, and safety issues. In a few states, highway projects have failed due to crumb rubber use. In general, most state and local governments and highway user interest groups do not believe there is sufficient benefit in using waste tire rubber in hot-mix asphalt to justify the cost.

RECOMMENDATION: *The Commission commends the Congress and President for repealing this unwarranted federal mandate.*

APPENDIX A

Staff Reviews of Mandates

FAIR LABOR STANDARDS ACT

Mandate

The *Fair Labor Standards Act* (FLSA) (29 U.S.C. 201, et seq.) establishes minimum standards for wages, overtime compensation, equal pay, recordkeeping, and child labor for nearly every workplace in the United States. In 1974, amendments to the FLSA extended the applicability of the law to the public sector. Under the amendments, state and local governments are subject to the same requirements as private entities. Although state governments may enact their own labor laws for public employees, such laws may be no less stringent than FLSA standards.

Background

The 1974 Amendments were challenged by the National League of Cities in *National League of Cities v. Usery*. In that case, the U. S. Supreme Court ruled that the 10th Amendment to the Constitution rendered the application of the FLSA's minimum wage and overtime compensation provisions to state and local governments unconstitutional. This ruling was reversed in 1985 in *Garcia v. San Antonio Metropolitan Transit Authority*.

The 1974 Amendments also extended coverage of FLSA to the executive branch of the federal government. Rather than treating the federal government as a private entity, however, the amendments provided independent regulatory and enforcement authority to the Civil Service Commission (now the Office of Personnel Management). The decision to allow the Civil Service Commission to administer FLSA for the executive branch recognizes that federal employment policies are within the purview of the federal legislative process (Title 5 of the United States Code), and can be amended at any time. Coverage under the FLSA was not extended to legislative branch employees until 1995, with an effective date of January 1, 1996. As in the case of the executive branch, the law allows an office within the legislative branch itself to administer FLSA provision for congressional employees.

Considerable confusion has arisen since the *Garcia* decision over the proper implementation of FLSA in the state and local public sector. The overtime pay provisions, in particular, have resulted in substantial litigation, with many state or local employees winning retroactive pay for work deemed by a court to qualify as overtime. The liability for many states and localities is in the millions of dollars and could go much higher. Moreover, even if a state or local government is successful in defending its employment policies as consistent with FLSA, there are often substantial litigation costs.

In an effort to reduce litigation, the Department of Labor (DOL) tries to provide assistance and guidance to state and local governments with respect to their obligations under FLSA. Also, according to a 1989 DOL letter to various governors, the department will not file a suit against a state to enforce compliance without at least 30 days written notice. These DOL actions, however, do not limit an employee's right under section 16(b) of the law to file suit independently against the state on FLSA issues. Individual employees may go to court to seek back wages as well as liquidated damages, attorney fees, and court costs.

In 1992, the Department of Labor acknowledged the public accountability aspects of state and local governments in its regulations concerning overtime pay, which made an exception to the salary basis test for state and local governments. This exception recognized state constitutional or statutory provisions prohibiting any employee from being paid for time not actually worked, or not covered by some type of paid leave. The regulations have been subject to a number of court suits that have resulted in conflicting opinions.

Concerns

Questions of applicability of FLSA to state and local governments generally are not raised out of dispute with the basic goals of the law. Rather, questions have been raised over the intrusiveness of the federal law into matters that fall exclusively within the jurisdiction of a state or local government (i.e., employment policies for their own employees).

FLSA is considered by many state and local governments to be an unfunded federal mandate because it requires state and local governments to implement some employment policies that would not have been implemented without the federal law. It is also argued that FLSA, in some cases, thwarts a state or local governments' efforts to control its own fiscal condition. In contrast, the federal government can set its own employment policies. The federal government has frequently considered, and sometimes enacted, changes in employment policies to increase or reduce federal spending.

Recommendation Options

1. Delete FLSA provisions extending coverage of the law to state and local government employees. The employment policies of state and local governments would be subject solely to collective bargaining agreements and public accountability in each state. Prior to the 1974 amendments to the FLSA, wages and working conditions for public employees were the responsibility of their respective state and local government jurisdictions.

2. Amend the FLSA to provide state governments with regulatory and enforcement authority similar to that granted to the federal government. State and local employees would continue to be covered by the FLSA, but state governments would be responsible for implementation in the state. In other words, the state governments would be granted authority similar to that given to the Office of Personnel Management (OPM) or the Congressional Office of Compliance. As in the case

of federal agencies, state policies would be required to be consistent with FLSA principles and would still be subject to judicial review. If taken to court, however, states would be defending policy decisions made by the state.

This option grants states more latitude than currently provided to define actions “consistent with” FLSA. For example, state governments may be able to enact flexi-time options, such as those offered in federal agencies, and still be “consistent with” the FLSA. The inability of states to enact flexi-time provisions is of particular concern because such a constraint conflicts with the Clean Air Act and other environmental laws that require state and local governments to develop commuter option plans to improve their ambient air quality.

3. Replace the FLSA provision allowing individuals to sue state and local governments over FLSA issues with language restricting FLSA suits to those brought by the federal government as a part of its enforcement responsibilities. To alleviate the current litigious situation, and in recognition of the federal government’s FLSA enforcement role, the law could be amended to make the federal government the only party able to bring a suit against a state for non-compliance. The Department of Labor could bring a suit against a state or local government based on its own findings or in response to an individual’s complaint. Individuals would still be able to bring a FLSA suit against the federal government.

4. Amend the FLSA to resolve the issues most often subject to intergovernmental controversies. There are instances where state and local costs related to FLSA implementation could be reduced or avoided if a closer working relationship existed between the Department of Labor and state and local governments. In other cases, there are FLSA issues that cannot be resolved without statutory changes. For example, although the department made a change in the salary basis test for public entities to relieve one of the difficult problems facing state and local governments, some courts have not upheld the validity of the regulation. Thus, consideration could be given to making specific changes in the law to alleviate the most troublesome aspects of the law from a state and local government perspective.

FAMILY AND MEDICAL LEAVE ACT

Mandate

The *Family and Medical Leave Act of 1993* (FMLA) (29 U.S.C., 2601 et seq.) requires employers to provide employees up to 12 weeks of unpaid leave each year to care for a newborn, adopted, or foster child. Leave also must be granted for care of a seriously ill child, parent, or spouse. In addition, employees may use unpaid family and medical leave for personal illnesses. Medical insurance benefits must be continued during the leave and employees must be reinstated into the same or an equivalent position after leave.

Background

FMLA was enacted to promote family stability and economic security among working men and women. At the time of enactment, the General Accounting Office (GAO) calculated that the primary costs associated with FMLA would relate to extending medical benefits and hiring and training temporary replacement workers, or other measures taken to maintain an employee's production output during the unpaid leave period. Some cost avoidance was anticipated for employers based on reduced employee turnover rates, anticipated higher productivity, and reduced need for hiring and training permanent replacement workers. It was thought that the cost of implementation would be mitigated by the fact that many employers, including 11 states and the District of Columbia, followed similar practices.

Concerns

State and local governments raise several concerns with the FLSA. First, they argue that the law sometimes contradicts state or local government leave provisions. In fact, rather than exempting jurisdictions that had family and medical leave policies, the federal law preempted those policies, except in the case of more generous benefits. Also, some claim that FMLA compromises collective bargaining negotiations between state and local governments and public employee unions.

A second issue is the inflexibility of the Department of Labor's interpretation of the law. Rather than allowing variable family and medical leave policies that are consistent with FMLA, state and local governments have been required to match the department's regulations. For example, even though the law does not specify the length of time an employee must return to work to avoid repayment of medical premiums, states are required to abide by the federal regulatory provision that sets the return-to-work period at 30 days. So, if an employee is absent for the allowable 12 weeks, a state may pay 3 months worth of medical premiums and the employee is only required to return to

work for 30 days to avoid having to reimburse any portion. Some states have suggested that employees be required to return to work for at least as long as they were absent or 30 days, whichever is greater, to avoid reimbursement charges. Such a policy could be considered consistent with the law but is not allowed under federal regulations.

Finally, FMLA is seen by state and local governments as an unfunded federal mandate because of the cost associated with the extension of medical insurance benefits and other factors. As noted above, these costs were anticipated by GAO prior to the law's enactment. Unanticipated, however, were the reportedly significant costs related to training personnel specialists on the law's provisions and the time spent counseling individual employees. In addition, record-keeping requirements related to tracking of FMLA leave have added costs, especially in cases where both spouses work for the same employer.

Recommendation Options

- 1. Make no significant changes in the law.** FMLA grants a significant benefit to employees struggling to balance family and work responsibilities. The act makes a positive contribution toward the national policy objective of strengthening family stability and improving economic security for working men and women. Thus, it could be argued that the benefits to the nation are worth the costs and that it is the rightful responsibility of employers—public and private—to fund the act's implementation. Nevertheless, some changes in the law could be made to allow for closer conformity between the federal law and state or local policies.
- 2. Exempt state and local governments from FMLA provisions.** The family and medical leave policies of state or local governments would be a matter of concern solely within the respective jurisdictions. This would recognize the public accountability aspects of state and local governments, and it would acknowledge the authority of these governments to conduct collective bargaining with public employee unions unhindered by federal preconditions.
- 3. Give state governments independent regulatory and enforcement responsibility for compliance with the law in the public sector.** State governments would be granted the same authority as the federal government to set their own family and medical leave policies consistent with FMLA. Currently, the law allows the Office of Personnel Management rather than the Department of Labor to issue regulations and enforce FMLA policies for the executive branch. Likewise, there are special provisions for congressional employees. Such an approach would not exempt a state from complying with the law, but would allow it flexibility to set its own policies consistent with the law. If challenged by an employee, the state would be responsible for the defense of its own policies and not those of the federal government.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mandate

The *Occupational Safety and Health Act of 1970* (OSHA). (29 U.S.C., 651-678) establishes standards for safe, healthy, and productive work environments. State governments and their political subdivisions, as well as the United States government, are specifically *excluded* from the definition of “an employer” under the act. In the case of state governments and their political subdivisions, OSHA has no requirements unless a state volunteers to participate in the program under the provisions of Section 18 of the law. In the case of the federal government, the law requires the head of each agency to establish and maintain an effective and comprehensive occupational safety and health program “consistent with” the standards promulgated by the Department of Labor (DOL) for non-government workplaces.

If a state does not participate in the federal OSHA program, DOL is responsible for all aspects of the program as it applies to businesses within the state. At the same time, since state and local governments are not considered employers under the law, DOL neither develops nor enforces occupational safety and health standards for employees in state or local government workplaces.

If a state assumes responsibility for development and enforcement of the federal OSHA standards, the law mandates state standards that “are or will be at least as effective” as the DOL standards. Also, to the extent permitted by state constitutions, the federal law requires these states to establish and maintain an effective and comprehensive occupational safety and health program for state and local government employees.

Background

Twenty-three states have assumed responsibility for operating the federal OSHA program (which extends coverage to state and local government employees). Two additional states have federally approved OSHA plans only for state and local government employees (see attached list). The remaining states may have their own occupational safety and health programs covering their state and local government employees and, in some cases, these state efforts may have standards or requirements similar or identical to OSHA.

Even in states not volunteering to participate in the federal OSHA program, there is an impact, or a perception of an impact, as a result of OSHA requirements. Safety and health procedures with the OSHA imprimatur sometimes are perceived as mandatory for the public sector even though there may be no federal law requiring them.

States choose to assume responsibility for the federal OSHA program for a variety of reasons. Some states had occupational safety and health programs before 1970 and wished to continue their role by assuming responsibility for the federal program. Many states desire to maintain closer relationships with businesses and workers on occupational safety and health issues than would be possible with a federally operated program. The states also can deal more appropriately with local conditions when they are responsible for program administration. Several states have been able to commit more resources than the federal government to the program.

OSHA authorizes the Secretary of Labor to provide grants up to 50 percent of costs for administration and enforcement to states that assume responsibility for the federal OSHA program. Although no funding is available for program compliance (e.g., training programs, equipment, or facilities modification), the Department of Labor recently took several steps to improve OSHA procedures and make the program more effective. The reform initiatives are directed primarily at business, but they also could help situations related to coverage of public employees in states participating in the federal program.

Concerns

- First, there is pervasive misunderstanding as to what is a federal mandate and what is a state or local government policy decision.
- Second, there is considerable lack of understanding or doubt over the rationale or scientific basis for many of the standards.
- Third, the credibility of the program is seriously compromised by the perceived rigidity, complexity, and burdensome nature of the rules and reporting requirements.
- Fourth, the perception is that the program has been more focused on punitive measures than compliance assistance.
- Fifth, the lack of federal funds for compliance costs creates situations in which state and local priorities are sometimes preempted in order to comply with federal program requirements.

Recommendation Options

1. Make no significant changes in the law. OSHA's protective standards and enforcement program are largely responsible for the 57 percent decline in workplace fatalities over the last 25 years. In Fiscal Year 1995, federal and state OSHA inspections helped make almost 70,000 workplaces safer for nearly four million workers. According to DOL statistics, however, each day more than 6,000 workers still lose time from their job as a result of a work related injury. Besides the personal and family tragedies, job-related injuries cost the economy over \$100 billion a year, and occupational illnesses cost many times more. Some statutory changes could be made to relieve the most burdensome aspects of OSHA program operations on state or local governments.

2. Amend OSHA to give participating state governments as much flexibility in regard to public employees as is authorized for federal agencies. The current law allows the heads of federal agencies to develop an occupational safety and health program that is “consistent with” the federal OSHA program for businesses. Arguably, this allows the heads of federal agencies to have occupational safety and health standards that are more *or* less stringent than the standards for others. Moreover, there is no requirement that programs developed by federal agency heads be approved by the Secretary of Labor.

In contrast, states must establish an occupational safety and health program for their public employees with standards that are “as effective as the standards contained in the approved plan.” Furthermore, the standards developed by the states must be submitted to the Secretary of Labor for approval as a part of the state plan process mandated in the law. The requirement that states operating the federal OSHA program have DOL approved occupational safety and health standards for public employees is difficult to defend when public employees in non-participating states are not covered by any federal standards.

3. Delete language in law regarding coverage of public employees. This option would allow all states to establish their own occupational safety and health standards for public employees independent of the federal program. Deletion of the language concerning public employees in states that volunteer to operate the federal OSHA program would treat public employees in those states in a manner consistent with the treatment of public employees in states that do not volunteer to operate OSHA.

**STATES WITH APPROVED PLANS
TO OPERATE FEDERAL OSHA PROGRAM**

Alaska	New York *
Arizona	North Carolina
California	Oregon
Connecticut *	South Carolina
Hawaii	Tennessee
Indiana	Utah
Iowa	Vermont
Kentucky	Virginia
Maryland	Washington
Michigan	Wyoming
Minnesota	
Nevada	Puerto Rico
New Mexico	Virgin Islands

*Plan covers only state and local government

DRUG AND ALCOHOL TESTING REQUIREMENTS OF COMMERCIAL DRIVERS

Mandate

The *Omnibus Transportation Employee Testing Act of 1991* (P.L. 102-143, Title V) requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, and mass transit industries. This law amends Sec. 5 (a)(1) of the *Commercial Motor Vehicle Safety Act of 1986* (P.L. 99-570) by directing the Department of Transportation (DOT) to issue regulations establishing a program which “requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use . . . of alcohol or a controlled substance.” The motor carrier requirements cover a substantial number of state and local government employees, and require them to undergo random drug and alcohol testing, effective January 1, 1996, for state and local governments with fewer than 50 drivers and January 1, 1995, for governments with more than 50 drivers.

In addition to the testing requirements, the law requires employers to (1) adopt a written policy and testing procedure, (2) provide for random selection by the use of a random number generator, (3) offer supervisory training in reasonable suspicion testing, (4) provide a substance abuse professional or employee assistance program, (5) conduct split sample testing with a laboratory that is certified by the U.S. Health and Human Services Administration (HHS), and (6) provide employees with information about the effects of drugs and alcohol. States and local governments forfeit federal grant money by not complying with the testing requirements.

Background

The law was enacted because alcohol and illegal drug use pose significant dangers to the safety and welfare and some effort must be made to eliminate the abuse of these substances by those individuals involved in the operation of heavy trucks and buses. Citizens depend on these operators to perform in a safe and responsible manner, and the use of alcohol and drugs has been demonstrated to affect the performance of individuals significantly and is a critical factor in transportation accidents.

There are significant safety benefits derived from the alcohol and drug testing policy. These rules help to prevent tragic, costly transportation accidents as well as help to improve worker productivity, decrease health care costs, and reduce worker absences. Despite the costs of testing large numbers of employees, the U.S. DOT believes that potential safety benefits to employees, employers, and the public outweigh the costs.

Issues of Concern

Some local governments believe this mandate is too expensive relative to the potential protection provided. Random testing requirements provide for testing employees on some regular basis, regardless of the probability of detecting a violation. Each year, the number of random alcohol tests conducted by the employer must equal at least 25 percent of all the safety-sensitive employees (50 percent for drug tests). In small rural areas with few employees, only one or two employees may be tested. The costs for the actual test and loss of service to the community can be very expensive and disruptive to operations.

There are several other issues. Rules are inflexible regarding approved testing procedures, devices, and certified personnel. The law also is inconsistent because certain personnel, such as law enforcement officers and emergency response workers, are exempt from drug and alcohol testing requirements, while others must be tested.

State and local governments are required to pay for all related costs including testing, employee time off from work, Medical Review Officer (MRO) costs, legal costs, and medical costs out of their operating assistance block grants, reducing the amount of funding left for other purposes such as paying operator salaries, buying fuel, and other costs of doing business. Federal drug/alcohol testing requirements have also led to additional paperwork and recordkeeping demands. Finally, local governments must transport employees to specialized testing centers or contract for expensive on-site test administration.

Recommendation Options

State and local governments support the concept of removing impaired operators from the nation's highways, but question whether federal requirements imposed on some of their workers is justified, especially in view of their rigid and costly nature. The following are possible alternative recommendations:

- 1. Retain the requirements under the *Omnibus Transportation Employee Testing Act of 1991* for drug and alcohol testing of state and local government commercial drivers.** The purpose of the act, to establish programs designed to help prevent accidents and injuries resulting from misuse of alcohol and controlled substances by drivers of commercial motor vehicles, is reasonable. Local governments that are experiencing unusual problems can work out alternative arrangements.
- 2. Exempt all state and local employees from federal drug and alcohol testing requirements for commercial drivers, as is now done for some employees.** Specifically exempt all state and local employees from application of testing requirements as is now done for emergency service drivers (law enforcement, firefighters, ambulance drivers). Strict drug and alcohol testing requirements for small rural communities and transportation systems with few employees create situations where costs of compliance are high relative to potential findings.

3. Make drug and alcohol testing requirements for state and local government commercial drivers more flexible. The federal government should permit states to design their own programs for identifying and correcting drug and alcohol abuse problems in state and local employees. For example, the *Drug-Free Workplace Act of 1988* (P.L. 100-690) requires only certification by all federal grantees and contractors of a drug free workplace. By using drug-free certification requirements instead of drug/alcohol testing procedures, state and local governments could provide accountability without following detailed prescriptive procedures.

METRIC CONVERSION

Mandate

The *Omnibus Trade and Competitiveness Act of 1988* (P.L. 100-418, section 5164) amended the *Metric Conversion Act of 1975* to, among other things, require that each federal agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical. The act permits the continued use of traditional weights and measures in non-business activities. Based on this law, the Department of Transportation (DOT) will require metric measurement in plans and specifications for construction work done by state and local governments after October 1, 1996.

Background

The *Unfunded Mandates Reform Act of 1995* requires ACIR to consider requirements that state, local, and tribal governments utilize metric systems of measurement. ACIR received objections from state and local governments to the DOT requirements to convert their transportation activities to metric measurements.

A review of the findings in the 1988 law provides little support for the DOT requirements. The law makes five findings: (1) world trade is geared towards metric; (2) industry may be at a disadvantage without metric; (3) the simplicity of metric will lead to savings in certain industries; (4) the federal government has a responsibility to assist industry as it "voluntarily converts to the metric system of measurement;" and (5) the metric system will provide advantages for the operation of the federal government. It is clear from the findings in the law that the principal purpose of the law is to facilitate business interests.

The law does not specifically require that state and local governments convert to metric measurements, but the requirement to apply metric measurement to grants indirectly requires their application to federally funded state and local projects. Another provision of the law specifically exempts non-business activities. This provision might provide a basis for exempting state and local governments, but DOT has determined that all transportation projects must comply.

Concerns

The principal concern, expressed primarily by local governments, is the requirement to use metric measurements in the design and construction of federally aided projects. While most local governments may be technically able to prepare plans and specifications in metric by the

deadline, they cite several problems, including substantial costs. The largest non-cost problem is that local contractors and suppliers are not used to working with metric measurements. Their employees who prepare bids and who do the construction work are not familiar with metric and do not have metric measures. In addition, metric will create problems for right-of-way acquisitions with property owners, surveyors, and local deed registries.

As a result of these types of problems, local governments may have to convert metric plans and specifications back to English measure for some uses. In addition to the additional costs of preparing plans and specifications in both metric and English measurements, local officials are concerned that the existence of two sets of documents using different numbers creates a significant potential for confusion and mistakes.

Alternatively, local contractors and others who are unfamiliar with metric may be forced by state and local governments to use only metric measurements on federally funded projects. Such a requirement may reduce the number of bidders on projects. The lack of familiarity with metric measurements by the contractor and employees may also result in errors. This will be true especially if other private and local government projects continue to use English measures.

Recommendation Options

While it is possible that metric requirements for local construction plans and specifications may eventually result in local highway contractors and suppliers converting to metric, these hardly seem the types of businesses that are targeted by the law as deriving benefits from conversion. As a consequence, the Commission believes one of the alternative recommendations below is justified:

- 1. Leave the law as it is, and rely on federal waivers to ease problems of individual governments.** States have made considerable progress in the transition to metric, and any changes now would create more confusion than help. Over 2,200 waivers have been given to relieve hardship situations, and more waivers can be granted if necessary.
- 2. Amend the law to specify that state and local governments can continue to use traditional weights and measures in federally funded projects.** The metric requirements are aimed at business conversions to facilitate international trade. State and local conversions to metric will have only indirect and minor effects on business conversions and international trade. The deadline for conversions will create substantial problems for many local governments without corresponding benefits to them or to the goal of metric conversion.
- 3. Delegate to states discretion over the extent to which metric conversion should occur in state and local activities and the timetable for implementation.** Many states are well along on their conversions and are actively working with local governments to aid them in their conversions. For states with less progress, successful implementation by other states will provide an incentive for them to proceed. There is no reason that all states have to implement on the same timetable.

BOREN AMENDMENT

Mandate

The Boren Amendment,¹ requires states to establish reimbursement rates to pay hospitals, nursing facilities, and intermediate care facilities for services provided to persons eligible for assistance through the Medicaid program. The mandated federal criteria provide that state-determined reimbursement rates be “reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards”

Background

The intent of the Boren Amendment was to give states a means of controlling costs related to reimbursement claims from providers of Medicaid services. Rather than basing reimbursements on a cost-related payment requirement for hospitals and nursing home services, the amendment allows states to pay for services based on a predetermined reimbursement rate, giving states a basis for denying reimbursement for costs determined to be in excess of that necessary to provide “efficiently and economically” delivered services.

The law is seen by many states as more of a burden than a benefit. One problem is the use of vague, undefined terms to describe the federally mandated criteria for reimbursement rates. Further, the federal government has made a conscious decision not to issue regulations defining the vague terms in the statutory language. Moreover, while the law requires reimbursement rates to be “determined in accordance with methods and standards developed by the State,” it also requires the federal government to be satisfied with the state-determined rates. To implement this requirement, the federal government has decided to require state processes for determining rates and the rates themselves to be a part of Medicaid State Plans. These plans are subject to approval by the Secretary of Health and Human Services.

The vagueness of the statutory language, combined with the lack of regulatory definitions, has resulted in substantial litigation, with some courts viewing the Boren Amendment as a cost based payment standard in which *all* cost incurred by the providers must be reimbursed. In these instances, states may be liable for significant sums to cover the retroactive rate increases ordered by the court for the group of providers involved in the suit. In some cases, the additional payments made as a result of a court-ordered retroactive rate increase are not eligible for cost-sharing from the federal government.

¹ Section 962 of the Omnibus Budget Reconciliation Act of 1980 (P.L. 96-499) as amended by Section 2173(a)(1) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

Most of the Boren Amendment litigation, however, does not relate directly to vagueness of the statutory language. Rather, the issue is a state's procedure for determining reimbursement rates. In such cases, if the procedure is ruled by a court to be flawed due to lack of adequate public notice or other factors, a state may be liable for substantial retroactive reimbursements based on a revised rate determination procedure. Again, depending on the situation, the additional payments made as a result of the court order may not be eligible for cost-sharing from the federal government, even though the rate determination methodology was approved as a part of the state's plan for the Medicaid program.

Concerns

Many states feel the Boren Amendment handcuffs their ability to constrain the growth in Medicaid spending during times of fiscal crisis. Requiring that Medicaid reimbursement rates be established within the limits of federally mandated criteria restricts the scope of a state's negotiations with providers of medical and nursing home services. Further, the threat of potential litigation often causes a state to increase rates merely to avoid legal actions. States are concerned about the extensive and expensive work necessary to substantiate compliance with the and to protect against suits by nursing home or hospital providers.

This situation is especially true since the 1990 Supreme Court ruling in *Wilder v. Virginia Hospital Association*, (496 US 498). The Supreme Court declared that medical care providers (instead of Medicaid recipients) are the intended beneficiaries of Boren Amendment. This ruling allows medical facilities and nursing homes to obtain judicial review of state reimbursement rates under the *Civil Rights Act*, Section 1983. In effect, the Court ruling allows hospitals and nursing homes to claim that a state is violating the hospital's civil rights by failing to pay "cost incurred to provide services."

Recommendation Options

1. Retain current provisions with no significant changes. Retention of a federal government role in the determination of Medicaid reimbursement rates would recognize that the law provides a means for the federal government to assure a minimum level of solvency for providers. This, in turn, gives some assurance of access to medical facilities for low-income persons. Also, in a sense, the Boren Amendment is used as a proxy to assure minimum standards of quality in medical and nursing home services.

While retaining a federal role in rate determinations, some changes could be made to clarify the statutory language to reduce litigation. The federal government's liability for court ordered retroactive rate increases could be specified especially in cases where the state's procedures had been approved by the Department of Health and Human Services (HHS). Besides alleviating state cost liabilities, such specificity may give HHS a greater incentive to continue improving its review practices.

2. Delete the federally mandated criteria and make states solely responsible for Medicaid reimbursement rate determinations. Deleting the federally mandated rate criteria and declaring states solely responsible for establishing Medicaid reimbursement rates would give states greater latitude in negotiations with medical service providers. However, it would also make states responsible for defending their established rates and could make states fully liable for retroactive rate increases.

While this option would clarify intergovernmental lines of accountability for Medicaid rate determinations, it would not necessarily significantly change rates. Under current law, while the federal government is responsible for declaring state determined rates satisfactory, it is not responsible for setting national reimbursement rates. On the other hand, with greater negotiating latitude, some states may be able to institute cost controls over rates of reimbursement as a result of voluntary agreements between states and medical providers. The success of the state governments in controlling costs will depend on their ability to maintain good working relationships with institutional providers and not on conditions or approvals given by the federal government.

3. Limit litigation actions to enforce the Boren Amendment. The number of litigation cases pursued in relation to the Boren Amendment could be reduced if the *Civil Rights Act* provision under which many of the suits are brought were narrowed to exclude institutions, such as hospitals and nursing homes, from being considered individuals under the provisions of Section 1983.

Alternatively, the law could be amended so that the federal government would be the only party eligible to bring suits against states for Boren Amendment violations. In this situation, once the federal government approved a state plan for setting reimbursement rates, any complaints on the rates would have to be brought to the federal government for resolution. A suit against a state would take place only if the federal government determined such action necessary to enforce compliance. On the other hand, individuals could bring suit against the federal government over questions related to the approval of a state's plan.

CLEAN WATER ACT

Mandate

States are required by the *Clean Water Act* to designate the uses of water, develop water quality criteria to protect those uses, monitor the condition of waters, and report on water quality every two years. States may administer a permit program for industrial and municipal pollution discharges and develop programs for the control of pollution from diffuse or nonpoint sources.

Local governments are required, either directly by the federal government or indirectly through state implementation of federal laws, to treat sewage to national standards and control discharges from combined sewers and stormwater drains.

Background

The *Water Pollution Control Act of 1948* was the first federal recognition of water pollution as a national problem. It provided research and technical assistance to state and local governments, but explicitly preserved and protected “the primary responsibilities and rights of the states in controlling water pollution.”

Eight years later in 1956, the condition of the nation’s rivers and lakes had not noticeably improved, and in some cases had deteriorated. The *Water Pollution Control Act Amendments of 1956* provided grants to states and interstate agencies for expanded water pollution control projects. While the law reaffirmed the primary responsibility of states over water pollution, it introduced a weak form of federal enforcement through federally called conferences on pollution. These conferences could ultimately lead to federal court actions against individual polluters.

Municipal interest groups continued to press for more federal funding for sewage treatment plants, and they were successful in the *Water Quality Act of 1965* and the *Clean Water Restoration Act of 1966*. In addition to providing \$3.55 billion of grant funds, these laws formally established a *national policy for controlling pollution*. The concept of “clean waters” was established as federal policy with the directive that interstate waters would be kept “as clean as possible.” Most importantly, the Secretary of HEW was authorized to apply water quality standards to interstate waters and to enforce them if states failed to set their own standards.

In the *Water Pollution Control Act Amendments of 1972*, Congress provided for a comprehensive national program to protect water quality. Key provisions included national minimum standards for control of pollutants from industrial and municipal sources, additional controls in permits as needed to meet state standards, and significant grant assistance to support construction of

municipal sewage treatment facilities. In effect, states and local governments ceded control over water pollution controls to the federal government in return for substantial federal financial aid.

In 1987, the federal government changed the arrangement by a transition from direct grants to capitalization of state loan funds. Loan funds reduce interest costs for some projects, but they still require local governments to pay virtually the entire costs of future pollution control projects. In addition, the 1987 amendments required municipalities to remove harmful amounts of toxins from their sewage and to establish stormwater management programs.

Concerns

The principal concerns of state and local governments are that a national program they originally supported and encouraged is no longer a balanced partnership to clean up the nation's waterways. Federal requirements, especially those dealing with stormwater drainage, have become increasingly stringent and expensive to implement. At the same time, the federal funding to aid in the cleanup has virtually disappeared.

Some state and local governments are particularly troubled by federal requirements for local National Pollutant Discharge Elimination System (NPDES) permits for their stormwater run-off. These permits require compliance with standards that have detailed numerical limits that, in many cases, may not be feasible to attain.

State and local governments also are concerned that many requirements are not based on adequate scientific research and that the law does not require cost-benefit analysis. In the earlier years of this program, the federal government worked closely with state and local officials to set plans, standards, and timetables. Concerns were expressed that this consultation has substantially diminished.

Recommendation Options

The joint federal-state-local efforts to clean-up waterways has been very successful, but since the changes in federal policies in the late 1980s, there have been increasing strains between the governments in this effort. To restore the successful partnership will require either a return to substantial federal sharing in the costs of clean-up, or a relaxing of inflexible imposition of standards and deadlines on state and local governments. Some possible recommendations to achieve this may be:

1. Amend the existing law to relieve some specific problems, but otherwise make no changes in the existing intergovernmental relationship. There are a few specific problems that can be legislatively addressed, but most of the concerns expressed by state and local governments do not require changes in the law. EPA has embarked on efforts to improve communications and understanding by state and local officials, and these efforts should relieve most concerns.

2. Reinstate direct federal sharing of costs, especially in cases of demonstrated local government hardships in financing improvements. While such a proposal may appear unworkable in view of federal budget constraints, the budget constraints on state and local governments are also severe. If there is a clear national need for additional spending, then the cost of doing so should not be imposed unilaterally on hard-pressed state and local governments.

3. Relax strict requirements and allow state and local governments discretion in developing standards, control methods, and timetables for state and local governments. If there is not a sufficient national priority to justify federal spending, then the requirements should be relaxed. State and local governments have traditionally been concerned about reducing pollution, and they should be trusted to work constructively with federal officials to design realistic programs to continue the progress that has been made.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Mandate

The *Individuals with Disabilities Education Act* (IDEA) P.L. 101-476 (originally the 1975 *Education for All Handicapped Children Act*) requires all local school systems to provide a free appropriate education for children with disabilities. The law provides that federal aid to states for elementary and high school education will be available only after a state has a federally approved plan for educating children with disabilities.

States also are required to incorporate specific equal opportunity guarantees and due process protections into their state education plans. The act specifies that a “free appropriate public education” must be directed at the particular needs of the disabled child through an individualized educational program and requires school districts to educate students with disabilities in the least restrictive environment, to the maximum extent possible with students without disabilities. In addition, IDEA requires all participating states to establish specific administrative procedures by which parents or legal guardians may challenge the identification, evaluation, or educational placement of the children.

Background

Nearly 20 years after *Brown v. Board of Education* declared that equal access and educational opportunities should be bestowed upon children of color, an equally important “right to education” case, *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania* [343 F. Supp. 279 (3d Cir. 1972)] opened these equal protection and due process rights to children with disabilities. Congress then passed the *Education for All Handicapped Children Act* in 1975, finding that state and local educational agencies were responsible for educating all students with disabilities, that state and local governments lacked the financial resources to do this, and that the federal government had a national interest to assist in meeting the educational needs of students with disabilities in order to assure equal protection under the law.

The Supreme Court, in 1984, further acknowledged the intergovernmental partnership in the area of special education. *Smith v. Robinson* [468 U.S. 992 (1984)] reiterated that the act was a “comprehensive scheme set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children. . . . The [IDEA] was an attempt to relieve the fiscal burden placed on States and localities by their responsibility to provide education for all handicapped children. . . . The responsibility for providing the required education remains on the States.”

Concerns

Since the passage of the original act and its subsequent amendments, state and local education agencies have resisted federal involvement in education, an area normally reserved for state and local authority. Numerous due process hearings in the local and state sector, recurring litigation of special education issues in state and federal courts, and congressional efforts to instill national special education policy on state and local governments indicate turbulence in the original intergovernmental cooperative effort in this area. Despite the success of educating millions of children with disabilities, IDEA creates administrative and financial burdens on state and local governments.

A major concern is the funding responsibilities of the federal and state governments. In 1975, Congress authorized appropriations at the maximum level of 40 percent of the excess costs of special education by 1982, but the federal portion has never exceeded 12 percent. As of Fiscal Year 1995, Congress has appropriated funds for only a maximum of approximately 8 percent of these excess costs. Funding was always an essential component of IDEA; the original intent was to assist states in meeting their obligations to provide equal protection under the law to students with disabilities. Federal contributions were to help fund state and local provision of special education and related services, as well as personnel preparation, operational research, and instructional media. Without this allocation, state and local governments have become liable for almost all IDEA expenses.

A second problem with IDEA is the funding allocation process. Lack of guidelines in providing and allocating funds, and financial incentives to “label” more students as “special education” students, are driving up the size and cost of the system. Appropriations are allocated to states based on the number of students identified as requiring special education in each state. A state retains a maximum of 25 percent of the federal money and passes the remainder to local education agencies based on the number of students receiving special education. The financial incentives to misidentify and overidentify children as “special” in order to receive more funding for state and local education agencies are costly and may hurt the children through stigmatizing special education labels.

Third, local education agencies are prohibited from combining IDEA funds with other federal funding streams to provide non-categorical support for children with disabilities. Inability to coordinate IDEA funds with other federal education programs reduces state and local flexibility to meet students’ needs.

Fourth, the resolution of disputes under IDEA has become overly litigious and adversarial, stemming from the statute’s imposition of a legal enforcement mechanism to guarantee children and their parents the education rights outlined in the act. As stated earlier, IDEA directs states to establish explicit administrative procedures for parents or guardians of students with disabilities to dispute the classification, assessment, or educational position of the child. When a local educational agency receives a complaint, the parents or guardian must be given timely, impartial due process hearing. In addition, the complaining party may bring the action in state or federal court if the case is not brought to an administrative conclusion. Recovery of attorney fees if

parents prevail adds to the costs of IDEA.

Finally, one of the primary concerns of state and local governments regarding IDEA is the usurpation of the states' authority in the area of education, a traditional domain of the state and local government. Federal funding for primary and secondary special education programs are contingent on a state's adoption of the provisions outlined in IDEA, allowing the federal government to involve itself in local school issues. IDEA forces states to submit their special education service plans to the federal government for approval, cutting into a policy area in which they may not be best suited to issue specific rules and regulations.

Recommendation Options

1. Retain the provisions of the *Individuals with Disabilities Education Act*, but examine and modify the funding structure. IDEA has allowed millions of students with disabilities access to a free and appropriate public education. The goals, purposes, rights, and protections offered by the act justify its mandate requirements. IDEA should be modified to remove funding provisions that encourage and reward the overclassification and segregation of students with disabilities.

2. Provide funding assistance to state and local governments for compliance. The federal government should increase funding for IDEA. Only about 8 percent of a special education student's cost is repaid by the federal government, well below the 40 percent intended by Congress when the law was enacted. The intergovernmental financial partnership in special education has been weakened by this funding problem. The act should be amended to relax some of the most costly requirements if the federal government fails to meet its funding commitments.

3. Defer implementation decisions to the state and local governments. State and local education agencies are better equipped than the federal government to determine an "appropriate education", and how to specially meet a student's needs through an individualized education program (IEP) that is nondiscriminatory and beneficial. Education policy implementation is a traditional responsibility of state and local governments. The federal government should provide state and local education agencies the flexibility to administer their special education programs in a manner that is effective in their own jurisdiction and good for their own children. The federal Department of Education should retain a formal monitoring presence.

4. Eliminate the statutory right of individuals to bring court actions or require alternate dispute resolution alternatives before use of due process procedures. IDEA provides a procedural structure for determining how the educational needs of each student should be met by state and local educational agencies. The decisions of the agencies may be challenged in either state or federal court, and in some cases, parents bringing actions on behalf of their children may be entitled to reimbursement for their costs, including attorney and court fees. Alternative dispute resolution practices should be required and any challenge in state or federal court should be brought by state or federal agencies, not by individuals.

AMERICANS WITH DISABILITIES ACT

Mandate

The *Americans with Disabilities Act of 1990* (ADA) (P.L. 101-336) prohibits discrimination against individuals with disabilities in employment, public services, and public accommodations, and requires state and local governments to ensure that individuals with disabilities are able to participate in the programs and services that they provide. Modifications in policies and practices are required to facilitate participation by individuals with disabilities. The act requires that telecommunications be made available to those with speech and hearing impairments through the use of telecommunication relay services. The law also compels employers to make "reasonable accommodations" for disabled workers, but not changes that would involve "undue hardship." State and local governments are required to make new and renovated facilities accessible to the disabled and to make "readily achievable" changes in existing facilities.

State and local governments have been covered by employment nondiscrimination requirements since January 26, 1992. Structural changes to existing buildings to meet "program accessibility" requirements were to be made by January 26, 1995, a deadline not met by many state and local governments.

Background

The law expanded civil rights protection to about 49 million Americans with mental and physical disabilities. Discrimination against the disabled was prohibited in federally funded activities by the 1973 *Rehabilitation Act* and in housing by the 1988 *Fair Housing Act*, but the disabled were not among the groups covered by the 1964 *Civil Rights Act*, which prohibited discrimination in employment and public accommodations on the basis of race, sex, religion, or national origin.

ADA requires that state and local governments review all policies, programs, services, and practices to ensure that they do not discriminate against people with disabilities. Procedural requirements established under Section 504 of the Rehabilitation Act are extended to state and local government programs not receiving federal assistance. Any policies found to be inconsistent with ADA provisions are to be modified as soon as feasible. Each program is to be examined for physical barriers to access and remedial steps necessary. Required self-evaluation and transition plans mandate that these governments designate an ADA Coordinator; consult with persons with disabilities; notify the public about ADA; establish an ADA grievance procedure for filing and mediation of informal complaints; establish timelines for modification of policies, programs, services, activities, and facilities; implement the modifications; justify any

policies and practices not to be modified; establish a system for evaluation; and maintain the plans on file for public inspection.

State and local governments are required to develop grievance procedures to resolve disputes in a timely and equitable manner. The Department of Justice (DOJ) encourages alternative dispute resolution before any legal procedures are needed (e.g., settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration). Emphasis is on alleviating tensions and grievances before litigation becomes necessary.

ADA is significantly different in its effects than the *Civil Rights Act* because it requires often expensive changes in physical barriers. This difference in the costs of compliance was noted by Senator Tom Harkin, chief sponsor of the ADA, "before the 1964 act if you were black, you couldn't sit at the lunch table, or you had to sit at the back of the bus. All businesses had to do to accommodate was to let them sit wherever they wanted. But disabled people can't even get on the bus, . . . so over time, the impact is greater."

Concerns

The greatest concern with ADA is the cost of compliance. No federal funding has been appropriated to cover most state and local compliance costs. With tight budgets and limited time to correct structural obstacles and to improve public accommodation, it is difficult for these governments to implement the extensive changes required.

Another concern is the use of the terms "reasonable accommodation," "undue hardship," "readily achievable," and countless other broad expressions. The law contains so many vague or overly broad provisions that state and local governments have been subjected to numerous lawsuits over legal interpretations of ADA. ADA provisions are complex, ambiguous, and difficult to interpret and administer, and they may result in unintentional discrimination. The penalties for noncompliance are severe, and legal costs can be substantial.

There are large gaps in information about ADA and the assistance available to comply with it. Some educational and technical resources exist in nonprofit service agencies and private for-profit legal and technical consultants, but obtaining federal technical support has been difficult for small governments. According to the National Council on Disability, without increases in information dissemination and technical assistance strategies, the demand for assistance and guidance will continue to overwhelm government resources. The federal government needs to sponsor and promote dialogue between state and local governments and technical assistance organizations to address and expedite compliance and to reduce the number of complaints that arise under the act.

Federal enforcement of ADA is uncoordinated. Eight federal departments have some enforcement power, including: Agriculture, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, and Transportation. It is the responsibility of these agencies to implement the ADA policies established by the Department of Justice. The prime

responsibility for processing complaints under ADA are the Justice Department and the Equal Employment Opportunity Commission. The Federal Communications Commission manages telecommunications issues. The National Council on Disability is an independent federal agency that identifies emerging issues and recommends disability policy to the President and Congress. The Architectural and Transportation Barriers Compliance Board provides some educational and technical assistance regarding accessibility. In effect, there is not a single, clearly designated, primary regulatory and enforcement agency.

Recommendation Options

In 1989, a year before ADA was enacted, ACIR made several recommendations on disability mandates in its report *Disability Rights Mandates: Federal and State Compliance with Employment Protections and Architectural Barrier Removal*. ACIR recommended that “federal, state and local governments work in closer partnership to pursue mandates for removing architectural barriers and enhancing employment opportunities for persons with disabilities.” Several of the recommendations in that report are still pertinent. The following possible recommendations for change may reduce the problems of compliance placed on state and local government without abridging the rights of persons with disabilities:

1. Retain the *Americans with Disabilities Act* provisions, but modify implementation elements of the law. ADA presents a social benefit to society through the integration of individuals with disabilities into society. While the basic provisions may be retained, there is a need to examine the implementation components of the act. Implementation problems can be addressed by a better focused federal response, including:

- a. Providing increased technical assistance and educational information to state and local governments.** The law is in its early stages, and most problems have arisen due to lack of sufficient federal staff and resources to respond to the demand for information. As state and local governments progress in implementing ADA, their questions will become increasingly technical, requiring complex and detailed responses.
- b. Providing a fair share of federal funding for retrofitting existing facilities.** The federal government should provide funding to state and local governments to assist in compliance with requirements that require extensive retrofitting or additions to existing facilities. Paratransit funding should be retained.
- c. Designating a single federal ADA enforcement agency.** Federal efforts should be coordinated into one or two agencies to improve enforcement visibility, educational dissemination, and technical assistance. The lack of a clearly designated and visible ADA enforcement agency with clear and evident compliance standards adds to the confusion. The federal government, through the Department of Justice and/or the Equal Employment Opportunity Commission could be responsible for planning, coordinating and funding accurate ADA information dissemination.

2. Provide flexibility to state and local governments and federal flexibility in the use of federal grants to comply. The law should be modified to change its orientation from rigid requirements toward a focus on goals and goal attainment schedules, allowing state and local governments the opportunity to develop their own means for achieving them. State and local governments have a better understanding of their specific accessibility problems and how to meet, or exceed, ADA goals at lower cost without following strict and rigid provisions.

ADA requirements should be temporarily or permanently suspended, or made voluntary, for communities without the fiscal capacity to comply. Standards of accessibility should be reviewed within distinctive urban and rural communities and counties, and these governments should be allowed voluntary compliance with federal goals. The ADA should take into account individual needs of the state and local governments as well as financial hardship and economic concerns.

Also, the federal government should extend or negotiate timelines for compliance based on mutual agreements between the governmental entities. If longer periods were allowed to comply with the structural modification requirements and the rules for accessibility of services and programs, it would allow opportunity for state and local agencies to spread out the expense.

3. Require that all legal action against state and local governments to enforce ADA be brought only by the U.S. Attorney General. Aggrieved citizens should be able to petition the Attorney General to act. Individuals currently have the option to file suit in federal court to seek remedies including compensatory damages for unlawful and intentional discrimination. These individual lawsuits could be minimized by modifying ADA language to clarify and simplify the goals and methods needed to achieve those goals so there is less left to judicial interpretation. The ability of individuals to sue state or local governments pursuant to enforcement of broadly worded, vague mandates creates enormous litigation costs and administrative uncertainties for these governments, and should be prohibited. If the Attorney General believes the case has sufficient merit to warrant a court action, it should be brought by the federal government, not by an individual.

SAFE DRINKING WATER ACT

Mandate

The *Safe Drinking Water Act* (SDWA) regulates drinking water standards for all waterworks serving 25 or more persons on a regular basis. It establishes maximum levels for contaminants known to occur in public water systems, establishes wellhead protection programs, certifies and specifies appropriate analytical and treatment techniques, and establishes public notification procedures. It requires drinking water suppliers to assume a wide range of responsibilities, including monitoring of the water supply.

Background

There are an estimated 58,530 water systems, with more than 25 customers each, providing water to about 219 million people. Approximately 37,425 of these systems are very small and serve less than 500 customers. While 15,740 systems are privately owned, 82 percent of the urban systems are government owned.

The *Safe Drinking Water Act of 1974* directed the Environmental Protection Agency (EPA) to impose standards applicable to all public water systems to protect human health from organic, inorganic, and microbiological contaminants and for turbidity in drinking water. This act was the beginning of direct federal requirements for local drinking water to meet national standards. Prior to 1974, states generally required local water systems to adhere to the U.S. Public Health Service drinking water standards for regulation of water used by interstate carriers.

The direct involvement of the federal government came after a 1969 Public Health Service study noted that many of its drinking water standards were based on insufficient data and did not cover many known contaminants. There were also concerns that some pollutants in drinking water were linked to cancer. These developments provided a basis for Congress to enact the 1974 law.

In 1986, Congress amended the law to identify 83 specific contaminants for which EPA was to set standards, and it mandated EPA regulations governing filtration for surface water supplies and disinfection for systems using surface or ground water. The law requires that 25 additional new contaminants be regulated every three years. The Congressional Budget Office (CBO) reports that, "\$1.4 billion to \$2.3 billion per year should be viewed as a range of estimates of the total cost that water systems will bear to comply with SDWA regulations that went beyond pre-SDWA standards." While the Department of Agriculture has provided grants for water supply systems, SDWA provides no compliance grants.

CBO recently examined benefits associated with SDWA, and based on the limited information available, found that the cost per cancer case avoided averaged for all water systems varied between \$0.5 million to \$4.3 billion, depending on the contaminant. CBO concludes that these high costs relative to benefits mean that states probably would never have undertaken all the required treatments without the federal mandate. The CBO estimates also raise questions about whether the federal government would have imposed the requirements if better information about cost-benefits had been available when the law was enacted.

Concerns

Prior to the imposition of federally mandated requirements, most states were already imposing Public Health Service Standards on local water systems. State and local government comments indicate that they continue to be willing to comply with standards that directly relate to eliminating reasonable health risks. The problems arise because of what are perceived as requirements to test for contaminants or treat surface water in instances where the risks are relatively low and the costs are significant. Because there is no federal participation in the costs, it is felt that requirements are being imposed for a wide variety of risks regardless of cost.

There also are substantial concerns about the lack of recognition in SDWA of the technical problems and high costs faced by small water suppliers. In some instances, tests that have nominal costs per customer for large systems are extremely costly per customer for small systems and may be beyond their technical capacity to comply. While variances and exemptions are permitted under some circumstances, the procedures required to obtain them may be unworkable.

Concerns also are expressed about being held equally accountable for violations that are genuinely health related and for failure to follow exactly prescribed schedules or testing procedures. States lack flexibility and discretion in implementing the law. Alternative, less expensive technology to address specific risks is not permitted in some instances. Sometimes, the treatment requirements do not relate directly to specific existing and measurable contamination.

Recommendation Options

The safety of drinking water is a public health issue that prior to 1974 was addressed by states relying on standards set by the Public Health Service. Bad drinking water endangers not only the residents of a local community and state, but also those traveling interstate, and thus regulation of drinking water may be justified as a national concern. However, in some other areas of vital public health concerns, such as restaurant inspections, the responsibility is left to state and local governments.

The disagreements over the Safe Drinking Water Act hinge on differences over what constitutes safe drinking water and how to achieve safe drinking water in the most cost-effective way. State and local governments do not object to assuming the costs of providing safe drinking water, but

some operators of water systems do object to incurring costs that in their opinion do not improve water quality.

1. Adjust the existing law to meet some of the specific objections. The law is making drinking water safer throughout the country and is not causing unnecessary costs or hardships for most water systems. However, proposed amendments, approved by the Senate, would relieve some of the most onerous provisions, or would delay their implementation until there is a better scientific basis for them. While the existing law overreached in both its standards and compliance requirements, it is basically sound in its approach. By addressing specific problems but leaving the structure of the law intact, there would continue to be federal oversight to insure the safety of drinking water.

2. Return to the issuance of national public health standards for drinking water, but leave the imposition and implementation of those standards to states. The federal government should provide basic standards for healthy drinking water. States should determine how to achieve those standards within their states. The pressure of public opinion would force the states to either comply or prepare a reasonable plan for complying with the national standards. In any event, the standards should be based on performance and not process. If a state is meeting the standards, it should not matter to the federal government how compliance is achieved. The burden of proof should rest with the federal government to determine whether a state is in compliance with national standards.

ENDANGERED SPECIES ACT

Mandate

The *Endangered Species Act of 1973* (P.L. 97-304) requires every federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed threatened and endangered species or the destruction or adverse modification of critical habitat. The environmentally protective features of this law are activated by a “listing” of an endangered species, which may be based on any one of a number of statutory factors. The “critical habitat” for a listed endangered species is defined to include areas “essential for the conservation of the species,” a designation that protects the habitat as well as the species. The critical habitat standards apply to specific areas “which may require special management consideration or protection.”

The requirements of the law apply to all state, local, and tribal projects that must obtain one or more federal permits or approvals. Under the law, state, local, and tribal governments may not be able to obtain a federal permit, license, or grant if the project does not comply fully with very specific uniform standards for protecting endangered species. Regulations provide for detailed consultation, conference, and biological assessment procedures. If the Secretary of Interior concludes that a species or its habitat will be jeopardized, the Secretary is to suggest “reasonable and prudent alternatives” to be implemented by the federal agency or the state/local applicant for a federal license or funding.

Background

The first endangered species legislation was a 1966 bill that called for saving U.S. wildlife, but provided the federal government little power to do so. Three years later, a new international focus on endangered species looked at the problem of preventing extinction worldwide. During the early 1970s, a new age of environmentalism swept the country, prompting the Congress to pass the *Endangered Species Act of 1973* (ESA), giving the federal government sweeping powers to conserve and recover listed species.

Under ESA, The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service are responsible for reviewing the status of species to see if they warrant listing as either threatened or endangered. The decision is to be based solely on scientific data, not on economic and political factors. These agencies sometimes target federal lands and other public domains, such as state parks, to carry out protection and recovery efforts. The federal government also has authority to restrict actions on private property where federal permitting authority applies.

In 1978, the Supreme Court in *Tennessee Valley Authority v. Hill*, (437 U.S. 153), found that the provisions and restrictions in ESA are absolute. The Court found an “explicit congressional decision” to afford “first priority” to saving endangered species, and a “conscious decision” by the Congress to give endangered species priority over the “primary missions” of federal agencies. Shortly after this decision, Congress authorized an exemption from the statutory prohibition if the federal agency or the state or local government can show that the value of the project outweighs the protection of the species, or if modifying or dismantling the project would cause undue social and economic hardship. The Endangered Species Committee is charged with reviewing and acting upon the exemption of ESA Section 7 rules, but has rarely been called on to do so.

Since its inception, ESA has been credited with helping preserve such nationally symbolic animals as the bald eagle and the grizzly bear, but critics charge that federal regulators have gone beyond the original intent of the law, causing widespread economic and social hardship. Supporters of the law assert that critics ignore the ecological role of the lesser known animals and plants that ESA protects, as well as the medicinal uses of some rare plants on the endangered species list.

Issues of Concern

Sometimes, there is little coordination and agreement between affected governments before or after a species is listed as threatened or endangered, whether the action is of regional or national significance. The Act does not require the federal implementing agencies to identify quickly and clearly activities on state, local, and tribal lands that may be affected by a listing decision. There is little incentive for the Fish and Wildlife and National Marine Fisheries services to discuss options with other federal agencies; state, local, and tribal governments; and private groups before listing is made. Instead, Fish and Wildlife biologists and other federal government employees often make choices for entire regions, favoring the interests of species over the interests of individual state, local, or tribal governments. By contrast, there have been highly successful federal programs involving states in the conservation of game species, specifically the Pittman-Robertson and Dingell-Johnson acts, which direct federal excise taxes to the states in support of game conservation.

From a state and local government perspective, significant development and construction projects are being halted and modified due to findings of “jeopardy” to endangered species and/or their habitats. If consultation or mitigation between the state or local government and FWS does not provide acceptable alternatives, the project may be completely terminated.

The listing process is very rigid and limits the flexibility of state, local and tribal governments to apply the Act’s protections selectively where they are most needed. The Fish and Wildlife Service uses the “best available scientific and commercial data” on species, creating a relative standard for data that sometimes is not conclusive, verifiable, or sufficient. Biologists from federal agencies often have the last word on what species is threatened or endangered. State,

local, and tribal governments are concerned about the poor condition of scientific peer review and the unrealistic criteria for the recovery of endangered species.

Finally, there is state and local government concern about the encroachment of the federal government's requirements on private property because of the adverse consequences for valuable economic development activities in their jurisdictions.

Recommendations Options

There is a need to restore an economic and ecological balance under the *Endangered Species Act*. The federal government's powers are broad and discretionary while the rules for state, local, and tribal governments are rigid and inflexible. For the law to work effectively and efficiently, state, local, and tribal governments need incentives to provide habitat for endangered species and the freedom to administer and enforce standards to achieve this goal.

The issue of compromise between economic activity and species conservation needs to be addressed and coordinated. Although the original intent of Congress, according to *Tennessee Valley Authority v. Hill*, was to "halt or reverse the trend toward species extinction, whatever the cost," economic impacts of critical habitat designation and of recovery plans need to be assessed by state, local, and tribal governments. A balance must be struck so that neither conservationists nor developers win all the time, and this balance must be agreed on by all levels of government.

1. Retain the provisions of the *Endangered Species Act*, but improve federal funding allocations and the implementation process. Protecting endangered species is a national priority. It is a task that should be maintained at the national level and placed alongside other basic values such as protecting health, maintaining the nation's defense, and fostering education. Weaknesses in ESA are due to inadequate funding and poor implementation. The federal government should increase actual funding levels significantly to aid state, local, and tribal governments in implementing the *Endangered Species Act*.

2. Amend the *Endangered Species Act* to make state, local, and tribal governments full partners with the federal government in the preservation of endangered species. State, local, and tribal governments should be consulted and have a consent role before a species is listed, and should be included in the management and planning decisions affecting the listing process. These governments should be allowed authority for species protection as well as flexibility in the implementation of conservation plans for specific species within their jurisdictional boundaries. State, local, and tribal representatives should be allowed to advise the Secretary of Interior on biological, economic, and intergovernmental considerations in conservation matters.

3. Policies of the *Endangered Species Act* should be modified to minimize the social and economic impact on state, local, and tribal governments of recovery planning and listing procedures. If implemented properly, ESA could produce better conservation decisions and cost society less, winning more public support. The goal should be to reduce the likelihood of economic disruption while ensuring species recovery. A range of incentives for conservation

agreements needs to be offered to avoid the need for listing. There needs to be greater emphasis on the affects of listing of species and designation of critical habitats on individuals, their communities, and their social and economic futures.

Scientific review procedures for listing and recovery decisions need to be examined and modified to ensure that decisions made under the *Endangered Species Act* represent the best available scientific information, that has been peer reviewed. Broader participation by state, local, and tribal governments will improve the data collection process and allow biological science, economic constraints, sociological factors, and available management resources to be taken into account on a regional basis. This expanded consultation in the scientific review process will distribute decision making responsibility and decrease some of the absolute power of the Fish and Wildlife Service.

CLEAN AIR ACT

Mandate

The *Clean Air Act of 1977* (P.L. 95-95) requires states to submit for federal approval a plan for meeting air quality standards established by the federal government. These plans must include emissions limitations and schedules of compliance. The federal government will prepare a plan for any state that fails to comply. The act spells out how to measure different types of pollution, the standards that must be met for each type of pollution, the specific compliance measures that may be taken, and the deadlines for those actions. Some federal financial assistance for planning and implementation is authorized in the law, but each state must provide assurances that “the State or general purpose local governments will have adequate personnel, funding, and authority under state and, as appropriate, local law to carry out such implementation plan.”

Background

The first national legislation in air pollution came in 1955 as a reaction to killer smogs in Donora, Pennsylvania; New York City; and London, England. Before then, the efforts to control air pollution were made primarily by cities. The first state law was enacted in 1952. Cities experiencing difficulties enforcing local air pollution laws supported national air pollution legislation because local polluting industries threatened to move to other less regulated areas.

The federal government was reluctant to enter the pollution control field because such regulation was seen as protecting the health, safety, and welfare of the people, a proper traditional function for the states under their police powers. The committee report on the 1955 bill noted, “The bill does not propose any exercise of police power by the federal government and no provision in it invades the sovereignty of states, counties, or cities.” What it did do was provide for research, training, demonstration projects, and grants-in-aid to local governments.

The *Clean Air Act of 1963*, noting a continued decline in the nation’s air quality, signaled the beginning of change in the pattern of federal-state-local relations by authorizing national air quality criteria and permitting federal intervention in the state if the state could not deal appropriately with the problems. It also provided grants to states and recognized their need to develop statewide control laws. With the passage of the *Air Quality Act of 1967*, the transition from local to state responsibility for air pollution control was established. States were required to develop, set, and implement plans to achieve national air quality standards. Increased federal grants accompanied the new requirements.

By 1970, only 21 states had submitted implementation plans, and the federal government decided it was necessary to set standards (including vehicle emissions) and enforce state implementation. Some of these strict requirements were deferred in the 1977 law. Nevertheless, the role of the federal government as principal promoter of strict air pollution standards was firmly established.

The 1990 amendments targeted smaller pollution sources, including facilities owned by local governments. By December 1995, governments in areas with moderate carbon monoxide pollution must adopt vehicle inspection and maintenance programs and require use of cleaner oxygenated fuels. Within another year, areas with moderate ozone pollution must set up similar programs and require use of gasoline-pump devices to capture vapors. Failure to implement these programs can result in the loss of federal highway funds.

Since the 1977 Act, and especially in the 1990 amendments, the requirements have become increasingly detailed and specific, and the role of states has become detailed as the implementer of federal laws with little discretion over them and less federal financial assistance. As early as 1981, ACIR reported “Many state governments have expressed concern over their roles as implementors of federal pollution programs. They complain that such programs have created financial hardship due to inadequate federal funding and administrative involvement.”

Concerns

The states have expressed a wide variety of concerns about policies contained in the current *Clean Air Act*. These concerns range from automotive emission controls to retrofitting state air conditioning units, and many of them relate to highly technical provisions and how they will affect the states’ ability to implement the requirements. While costs do not seem to be the overriding concern, several states noted that federal aid is totally inadequate in relation to the responsibilities that have been delegated. A basic problem seems to be the extremely detailed and complex requirements that states must enforce, regardless of their technical capabilities or whether they agree with the actions required.

Recommendation Options

The initial demand for federal help in controlling air pollution came from cities that were unable to act effectively on an individual basis. Because the federal government recognized the need to act on regional bases, and in recognition of the federal system as viewed at that time, the states were encouraged by the federal government to assume responsibility for controlling air pollution and were given federal grants to assist in implementing such controls.

However, because it was believed that states were not acting swiftly or effectively enough, federal laws have become increasingly detailed and prescriptive. This has distorted what started as a partnership into a mandate. There are several possible recommendations that will recognize the need for a federal role, but reduce state and local concerns.

1. Make no changes in the law, but increase federal financial aid and technical assistance, and relax some deadlines. The law has evolved over a number of years and addresses an important national problem. The concerns of state and local governments are primarily with the details of implementing the law and meeting the deadlines, not with the existing premises of the law.

2. Amend the law to provide only performance goals that states are required to meet within reasonable time periods, with federal technical assistance to states. Each state should be permitted to develop its own ways of meeting general standards. The methods chosen should reflect the conditions and the citizen's preferences in the state. Because states often lack technical expertise, the federal government should provide free assistance to any state requesting help.

3. The penalties for failure to comply should be changed to positive incentives to comply. As states increase the effectiveness of their control activities, they should receive increasing amounts of federal financial aid. There should be no reductions in aid for failure to comply.

DAVIS-BACON RELATED ACTS

Mandate

The *Davis-Bacon Act* (40 U.S.C 276a-7) applies to federal government contracts over \$2,000 for construction, alteration, and/or repair work. The law requires such contracts to specify the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. The minimum wages must be based on the wages determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on similar contracts in the city, town, village, or other civil subdivision of the state in which the work is to be performed.

About 60 other federal laws make compliance with Davis-Bacon a condition-of-aid for grants to state and local governments (e.g., construction programs related to low-income housing, highways, and waste water treatment facilities). These laws are known as Davis-Bacon related acts.

Background

The *Davis-Bacon Act* was enacted in 1931 during the Great Depression. The primary purpose was to bring stability to the construction industry and place a floor under downward spiraling wages. It prevented non-local contractors from underbidding local contractors for work on federal public works projects by hiring workers from other areas willing to accept lower wages than those prevailing in the local area. The law is not intended to reduce costs. Instead, Davis-Bacon requirements are meant to guarantee that the federal government's vast purchasing power, coupled with a requirement to award contracts to the lowest bidder, will not undercut construction wages in local labor markets or undermine local economies.

To determine prevailing wages in an area, the Department of Labor (DOL) seeks information from various sources including voluntary responses from local contractors on their wage and benefit rates for various classes of mechanics and laborers. The Department computes either a "majority rate" or a "weighted average rate" for an area. If a single wage and benefit rate is paid to more than 50 percent of the workers in a job category, that rate is used as the prevailing wage for the area. If there is not a standard area wage and benefit rate for more than 50 percent of workers, the prevailing wage will be determined by dividing the hourly wages of all workers in a certain job classification by the number of workers. Although the law allows prevailing wages to be computed for different types of political subdivisions, DOL normally issues the rates on a county basis. A multicounty area can be used if insufficient data are available from the county where the work is to be performed.

The *Davis-Bacon Act* allows the federal government to suspend application of the Act in emergency situations. Most recently, a suspension was made in the aftermath of the 1992 hurricanes in Florida and Hawaii. According to Proclamation 6491 issued by the President on October 14, 1992, the wage rates imposed by Davis-Bacon increased the cost of federal assistance to the disaster areas. Thus, a suspension was ordered to allow greater assistance to the devastated communities within the available funds and to permit the employment of thousands of additional individuals.

Concerns

Concerns expressed by state, tribal, and local governments include:

- (1) Reporting and recordkeeping to document compliance with Davis-Bacon provisions are burdensome and may make it difficult for small businesses to compete.
- (2) Some governments report significantly increased costs because the prevailing wage is usually higher than some actual wages paid in the area.
- (3) Compliance with Davis-Bacon requirements may divert resources from other needed public works projects.
- (4) Davis-Bacon requirements may reduce the hiring of persons with limited experience because contractors who are required to pay the prevailing wage are more likely to choose an experienced worker. Contrary to its original intent, therefore, Davis-Bacon may discourage hiring local persons if the area where the work is to be performed has a heavy concentration of persons with limited experience.
- (5) Problems with the DOL method of determining prevailing wages include the voluntary and sporadic nature of the survey and the scarcity of construction project wage and benefit data in some areas. Conducting the survey on a voluntary basis potentially allows union rates to skew the data. The scarcity of data in some areas means that wage rates from distant areas often must be used in small communities with infrequent construction projects.

Recommendation Options

- 1. Make no significant changes in the current laws.** The federal government's purchasing power through direct contracts or through the provision of grants and loans to state, tribal, and local governments is substantial. Thus, there continues to be a need to assure that government requirements for acceptance of the lowest bid are not used to undercut local economies.
- 2. Repeal provisions in related acts making compliance with Davis-Bacon a condition-of-aid.** Davis-Bacon compliance provisions would no longer be in numerous federal grant and loan programs, but the act would continue to apply to federal government contracts. Under this option

laborers and mechanics on state and local projects would be covered by the same protections as other workers. The same marketplace constraints that control wages and benefits for professions other than construction workers would be in effect, including the FLSA and other laws in effect within the jurisdiction in which the construction project is being performed. At the present time, 31 states have Davis-Bacon type laws.

3. Revise threshold and other provisions in Davis-Bacon related acts to reduce the administrative, recordkeeping, and reporting requirements imposed on small contracts. Unless otherwise specified, the general provisions requiring compliance with Davis-Bacon as a condition of aid seem to take effect even if as little as one dollar of federal money goes into a project costing over \$2,000. Raising the dollar threshold that defines applicable contracts would reduce the number of state and local contracts subject to Davis-Bacon while assuring that major contracts for publicly funded construction projects still contain basic Davis-Bacon protections. Other amendments could be made to simplify recordkeeping and reporting requirements. Finally, the related acts could be revised to require a certain percentage of federal funds for a project before compliance with Davis-Bacon is required.

Precedent for such revisions in related acts exists in many laws. For example, some laws change the \$2,000 threshold for applicable contracts to another measure (e.g., square footage in a project). Other provisions allow areas to identify the use of federal and non-federal moneys separately in a contract so that non-federal moneys are not subject to Davis-Bacon rules.

RECYCLED CRUMB RUBBER

(Note: Although this provision was repealed before ACIR considered its recommendations, it is still included for consideration because it represents a good example of the type of mandate that needs to be given greater attention by federal officials before enactment.)

Mandate

Section 1038 of the *Intermodal Surface Transportation Efficiency Act of 1991* (ISTEA) (P.L. 102-240) requires states to satisfy a minimum tonnage utilization requirement for asphalt pavement containing recycled rubber on federal-aid projects. The requirement is 5 percent for 1994, 10 percent for 1995, 15 percent for 1996, and 20 percent thereafter. The Secretary of Transportation (DOT) may waive the penalty for any three-year period on evidence of health, environment, and performance problems associated with asphalt pavements containing rubber. Individual state exceptions can also be made if there is an insufficient supply of scrap tires. The penalty for non-compliance is withholding of highway funds, other than Interstate funds, in an amount related to the noncompliance.

Background

This legislation was born out of a desire to “find a useful home” for whole scrap tires or shredded tire material taken from automobiles, trucks, or other equipment. For 1994 and 1995, Congress suspended application of this requirement. In November 1995, the requirement was permanently repealed.

Concerns

Requirements for asphalt pavement containing recycled rubber has been identified as a major issue by such diverse groups as the National Governors’ Association, American Association of State Highway and Transportation Officials, and the National Rural Development Partnership (NRDP), as well as several states. Rubberized asphalt has been shown by some states to cost 50-100 percent more than conventional asphalt mixes. This mandate would increase the cost of highway projects, particularly major rehabilitation jobs.

Other markets for scrap tires exist and there is no need to mandate their use in asphalt. Connecticut operates a tire-to-energy plant, which consumes annually 20-30 times the number of tire carcasses that could be used in pavement; in turn, benefits are accrued from the energy produced. Minnesota recycles most waste tires in other ways and would have to import waste

tires from other states to meet the percentage requirements. In Virginia, the requirement will use only 4 percent of the waste tires generated each year.

Recommendation Options

1. Repeal the requirements for the use of crumb rubber in asphalt. Most state and local governments suggest outright repeal of Section 1038 of ISTEA as a primary option. The provisions in Section 1038 appear to have been enacted with inconclusive scientific research of the environmental, safety and health aspects of using crumb rubber in asphalt mix. At the very least, the federal government should retain the moratorium on implementation until adequate scientific research and pilot projects show that crumb rubber is a feasible and successful product for asphalt pavement use in most conditions and climates or until technical concerns about the integrity of the pavement are alleviated.

2. Provide incentives for utilizing crumb rubber in asphalt rather than penalties. Delete Part (d)(4) regarding "Penalty." There is no reason for major federal highway funds to be withheld. An incentive would better encourage states to seek cost-effective methods for dealing with the environmental problems associated with rubber tire disposal.

APPENDIX B

ACIR Criteria for Review of Federal Mandates

CRITERIA FOR REVIEW OF FEDERAL MANDATES

by the Advisory Commission on Intergovernmental Relations

Approved by the Advisory Commission on Intergovernmental Relations

June 28, 1995

The Advisory Commission on Intergovernmental Relations (ACIR) is charged in Sec. 302 of the *Unfunded Mandates Reform Act of 1995* (P.L. 104-4, 109 Stat. 67) with investigating and reviewing the role of Federal mandates in intergovernmental relations [Sec. 302(a)(1)] and with making recommendations for improving the operation of mandates [Sec. 302 (a)(3)]. The law defines "Federal mandate" very broadly for the purposes of the ACIR review as "any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty on State, local, or Tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program."

For purposes of reviewing the role of Federal mandates under Sec. 302(a)(1), ACIR will take into account the positive attributes of mandates and the rationale for their adoption, as well as the characteristics of mandates that present problems. For purposes of making the recommendations required under Section 302(a)(3), ACIR will select for review only Federal mandates that are generally recognized as creating significant concerns within the intergovernmental system. In accordance with P.L. 104-4, ACIR will give review priority to mandates that are subject to judicial proceedings in Federal courts.

Prior to making recommendations under Sec. 302(a)(3), the Commission is required to issue criteria. The following criteria will fulfill that requirement.

The Commission will make the final decisions about which mandates it will review and what recommendations it will make. The Commission's decisions will be based on two types of criteria:

- (1) those that provide a basis for identifying mandates of significant concern; and
- (2) those that provide a basis for formulating recommendations to retain, modify, suspend, or terminate specific mandates that are of concern.

These criteria are intended solely to help the Commission make its recommendations.

CRITERIA FOR IDENTIFYING MANDATES OF SIGNIFICANT CONCERN

In general, Federal mandates will be selected for intensive review if they have one or more of the following characteristics:

- 1. The mandate requires State, local, or Tribal governments to expend substantial amounts of their own resources in a manner that significantly distorts their spending priorities.** This addresses mandates that require more than incidental amounts of spending. It will not include all Federal mandates that require governments to spend money.
- 2. The mandate establishes terms or conditions for Federal assistance in a program or activity in which State, local, or Tribal governments have little discretion over whether or not to participate.** This will include mandates in entitlements and discretionary programs. It will exclude conditions of grants in small categorical programs that are distributed on the basis of annual or periodic applications and that are received only by a limited number of governments unless the conditions effectively limit access to such programs by small governments.
- 3. The mandate abridges historic powers of State, local, or Tribal governments, the exercise of which would not adversely affect other jurisdictions.** This will include mandates that have an impact on internal State, local, and Tribal government affairs related to issues not widely acknowledged as being of national concern and for which the absence of the mandate would not create adverse spillover effects. This also will include mandates that abridge the power of State, local, or Tribal governments to impose taxes within the limits of the U.S. Constitution and that provide particular tax treatment to particular classes of taxpayers.
- 4. The mandate imposes compliance requirements that make it difficult or impossible for State, local, and Tribal governments to implement.** Implementation delays, issuance of court orders, or assessment of fines may be indicative of mandate requirements that go beyond State, local, or Tribal fiscal resources, or administrative or technological capacity, after reasonable efforts at compliance have been made.
- 5. The mandate has been the subject of widespread objections and complaints by State, local, and Tribal governments and their representatives.** This will include mandates that are based on problems of national scope, but are not Federally funded.

CRITERIA FOR FORMULATING RECOMMENDATIONS

ACIR will investigate the specific characteristics of each Federal mandate causing significant concern in order to formulate specific recommendations to retain, modify, suspend, or terminate the mandate. In making these recommendations, ACIR also will consider the beneficial and non-beneficial effects of mandates. For purposes of formulating such recommendations, ACIR will focus on specific provisions in laws, regulations, or court orders.

When a mandate affects a State, local, or Tribal program that directly competes with a comparable private sector activity, ACIR will consider the effects of the mandate and the Commission recommendation on both the government and private sector. ACIR also will consider (1) impacts of mandates on working men and women and (2) mandates for utilization of metric systems.

ACIR will investigate each mandate selected for intensive review to determine whether or not they have one or more of the following characteristics that should be considered by ACIR in making its recommendations:

1. Federal Intrusion

Requirements are not based on demonstrated national needs.

Requirements are related to issues not widely recognized as national concerns or as being within the appropriate scope of Federal activities.

Requirements are based on problems of national scope, but which State, local, or Tribal governments have demonstrated ability or willingness to solve effectively, either independently or through voluntary cooperation.

Requirements are based on problems of national scope, but are not Federally funded.

These mandates should be terminated, retained, funded, or modified to express non-binding national guidelines.

2. Unnecessarily Rigid

Provisions do not permit adjustments to the circumstances or needs of individual jurisdictions.

Provisions restrict flexibility to use less costly or less onerous alternative procedures to achieve the goal of the mandate.

Provisions do not allow governments to set implementation or compliance priorities and schedules, taking into account risk analysis, greatest benefit, local capacity, or other factors.

These mandates should be modified to provide options, waivers, or exemptions, or be terminated.

Provisions are not justified by appropriate risk assessment or cost-benefit studies. These mandates should be terminated or modified to reflect current science. In some cases, suspension of the mandate may be appropriate to provide time for additional research.

9. Lacking in Practical Value

Requirements do not achieve the intended results.

Requirements are perceived by citizens as unnecessary, insignificant, or ineffective, thereby producing credibility problems for governments.

Requirements have high costs relative to the importance of the issue.

These mandates should be evaluated to determine whether or not they are effective. If they cannot be shown to be effective and worthy of public support, they should be terminated. If they are effective, it still may be appropriate to suspend the mandates to allow time for public education and consensus building on their value.

10. Resource Demands Exceed Capacity

Requirements for compliance exceed State, local, and Tribal governments' fiscal, administrative, and/or technological capacity.

These mandates should be terminated or modified to reduce compliance problems, or assistance could be provided to upgrade capacity. In some instances, compliance schedule extensions or exemptions may be appropriate.

11. Compounds Fiscal Difficulties

Compliance with the requirements of any one mandate or with multiple mandates compounds fiscal difficulties of governmental jurisdictions that are experiencing fiscal stress.

In these situations, certain of the mandates affecting the jurisdictions—exclusive of those that are vital to public health or safety—should be considered for partial or total suspension until the government experiencing fiscal stress is able to comply. The conditions triggering consideration of such suspensions should include:

- a. *Governments faced with costs dramatically out of line with their revenue bases, as determined by comparisons with other similar governments that are complying.* This may result from local and Tribal governments experiencing fiscal stress due to depopulation, loss of tax base, or inability to raise matching funds from user fees due to low average household income or small population base; or
- b. *Governments that are experiencing severe fiscal distress for reasons not immediately within their control.* There should be some definitive evidence of severe problems, such as State receivership, State declaration of distress, Chapter 9 bankruptcy, or a debt rating below investment grade. This should not include annual budget balancing problems.



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John H. Stroger, Jr., Commission President, Cook County, IL
(Vacancy)

TABLE 4.5 Selected state legislative actions affecting spatial data and information activities.^a

State	Citation (s)	Type	Description	O	CR	L	F	P	A
Alaska	1900 AK.Ch. 200	Open records	Recent amendments to open records law to take into account nature of automated information		✓	✓	✓	✓	✓
	Alaska Stat. §14.40.095	Education	Establishment of center of information technology at Univ. of Alaska that includes GIS						
Arizona	A.R.S. §37-173 (1989)	GIS organization	Requires Resource Analysis Division to set up GIS	✓					
California	Cal. Gov. Code §6254.9 (1990)	Open records	Excludes computer software developed by government agency from public records and allows sale and licensing of the software						
Colorado	C.R.S.24-72-205 (1992)	Open records	Provides for governmental copyright of public records, and for the charging of fees for information based on the cost of providing the electronic services and a portion of the costs for building and maintaining the system		✓				✓
Delaware	1992 H.J.R. 17	GIS organization	Establishes a GIS oversight committee to coordinate GIS activities and resources	✓					
Florida	1990 Fla. Laws 217	Appropriations	Statewide public lands GIS						
	Fla. Stat. @282.403 (1990)	Data processing	Transfer of data related to growth management among state automated information systems						
Idaho	Idaho Code §39-120 (1990)	Health and safety	GIS for water resources						
Illinois	III. Rev. Stat. ch. 111½, par. 7056 (1988)	Solid waste management act	Solid Waste Management Act; application of Dept. of Energy and Natural Resources GIS						
Indiana	1990 Ind. P.L. 6	Census	Study costs of acquisition of GIS						

State	Citation (s)	Type	Description	O	CR	L	F	P	A
Iowa	Iowa Code §455E.8 (1989)	Natural resource regulation, groundwater protection	Develop and maintain a natural resource GIS						
Kansas	1990 Kan. SB 793	Appropriations	For state water plan						
Kentucky	KRS §61.970	Open records (public access to gov. data bases)	An open records law directed specifically at GIS data and GIS. Exempts GIS data base from public disclosure if for commercial purpose		✓		✓		✓
	KRS §61.975		Fees for copying GIS, even if not for commercial purpose if nonstandard "product"		✓		✓		
	KRS §61.992		Penalty for abuse of commercial use						
Louisiana	Senate Concurrent Resolution No. 112	Task force to study certain issues	GIS/GPS task force	✓					
	House Concurrent Resolution No. 171	GIS network	Formal recognition of existing task force, and directed to attempt to secure federal funds	✓					
Maine	12 M.R.S. §1753-A, 1756 (1991)	Natural resources	Affects organization and representation of GIS on the Information Services Policy Board, and authorizes the Board to set fees and standards for the Maine GIS	✓	✓	✓			✓
	30-A M.R.S. §4342 (1989)	Planning and land use	Growth management program; development of GIS	✓					
Maryland	1992 H.B. 1538	Automated mapping-GIS	Creates a State Automated-GIS Review Board; authorizes products and services to be made available to the public	✓	✓				✓
Massachusetts	1990 Mass. H.B. 5701	Appropriations	GIS manager						
Minnesota	1990 Minn. Ch. 594	Appropriations	Funds for consultant to study GIS						
	1991 Minn. Ch. 254	Appropriations	To Commission of Natural Resources to develop GIS tools to correlate forest bird populations with dynamics of forest landscape						

State	Citation (s)	Type	Description	O	CR	L	F	P	A
Mississippi	Miss. Code Ann. §19-3-41 (1990)		Provides for state authority to approve local gov. GIS; authorizes borrowing for GIS by local gov. and the imposition of a tax to repay loans	✓			✓		
Nebraska	1991 Neb. L.B. 639	Intergovernmental cooperation	Creates GIS Steering Committee	✓					
Nevada	1991 Nev. AB 772	Congressional districts	Redistricting congressional districts, referencing use of GIS	✓					
New Hampshire	RSC 4-C:3 (1989)	State planning	Statewide GIS development and support for planning purposes	✓					
North Carolina	NC. Gen Stat. §102-17	Official survey base	Financial assistance to counties for base maps				✓		
	1991 N.C. Ch. 285	Public records; special legislation	Qualified exception from Public Records Act for certain GIS. County may require agreement that GIS data not be resold for commercial purposes.					✓	
	NC. Gen Stat. §143-345.6	State departments	Land Records Management Program for deeds, maps, and plats. Creates advisory committee	✓					
	1991 H.B. 356	Public records; special legislation	Creates an exception to the Public Records Act for GIS in Lincoln and Brunswick counties		✓				✓
Rhode Island	R.I. Gen Laws §16-32-30	Education	Univ. of R.I. to establish GIS laboratory, and assist state GIS						
Utah	1991 Ut. SB 21	GIS	Appoints state data processing coordinator; creates Automated Geographic Reference Center which will provide GIS services to state agencies, set policies, manage state GIS data base, set fees	✓				✓	
Vermont	3 V.S.A. §20 (1989)	Executive branch	To develop strategy for GIS	✓					
	24 V.S.A. 4345	Municipal and regional planning	Develop regional data base compatible with GIS						
	1992 H.B. 955	GIS organization	Authorizes Governor to make Vermont GIS a not-for-profit corporation	✓					✓

State	Citation (s)	Type	Description	O	CR	L	F	P	A
Virginia	§2.1-526.18-22, Va. Code		Establishes Division of Mapping, Surveying, and Land Information Systems and the position of Coordinator to coordinate these activities for state and local government	✓					
	1992 H.B. 267	Local government	Provides that local governments may develop GIS and require their departments to use them	✓					
Washington	RCW 43.63A.550 (1990)	Dept. of Community Dev.	Dept. of Community Dev. to study what amounts to GIS to support growth analysis	✓					
West Virginia	1992 H.B. 4433	Public records	Establish requirements for fulfilling requests for records in electronic format						✓
Wisconsin	1989 Wis. Laws 31 and 339	User fees	Empowers local governments to modernize land information; establishes standards within and between governments	✓			✓	✓	✓

O - Organizational structure; CR - Cost recovery; L - Liability; F - Funding mechanism; P - Privacy; A - Access

* Information provided by H. Bishop Dansby, GIS Law and Policy Institute, Harrisonburg, Virginia.